

United States
Circuit Court of Appeals
For the Ninth Circuit.

E. SCHOENWALD and S. T. HILLS as Receivers
and Assignees of the PACIFIC COAST &
NORWAY PACKING COMPANY, a Cor-
poration,

Plaintiffs in Error,

vs.

HARRY A. BISHOP, as United States Marshal
for the First Division of the District of
Alaska, and D. N. McDONALD,

Defendants in Error.

Transcript of Record.

Upon Writ of Error to the United States District Court of the
District of Alaska, Division No. 1.

Filed

APR - 1918

F. D. Moulton,
Clerk

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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Names and Addresses of Attorneys of Record.

WINFIELD R. SMITH, Seattle, Washington, and

WINN & BURTON, Juneau, Alaska,

Attorneys for Plaintiffs in Error.

GUNNISON & ROBERTSON, Juneau, Alaska,

Attorneys for Defendants in Error.

*In the District Court for the District of Alaska,
Division Number One, at Juneau.*

No. 1264-A.

E. SCHOENWALD and S. T. HILLS and E.
SCHOENWALD and S. T. HILLS, as Re-
ceivers and Assignees of the PACIFIC
COAST & NORWAY PACKING COM-
PANY, a Corporation,

Plaintiffs,

vs.

HARRY A. BISHOP, as United States Marshal for
the District of Alaska, Division Number One,
and D. N. McDONALD,

Defendants.

Complaint.

Plaintiffs complain and allege:

I.

That on, to wit, the 16th day of September, A. D. 1914, E. Schoenwald, one of the above-named plaintiffs, was duly and regularly appointed receiver of the Pacific Coast & Norway Packing Company, a Corporation organized under the laws of the State

of Minnesota and doing business in the Territory of Alaska, by the Superior Court of King County, State of Washington, a court of competent jurisdiction, in the case of Roy W. Niven vs. Pacific Coast & Norway Packing Company, a corporation, in cause No. 103,-639 of said King County Superior Court. That immediately thereafter and on, to wit, said 16th day of September A. D. 1914, the said E. Schoenwald filed his bond as such receiver, which was duly and regularly approved and he duly and regularly qualified and became the acting receiver of [1*] the said Pacific Coast & Norway Packing Company, and has ever since and is now one of the receivers of said company.

II.

That thereafter and on, to wit, the 25th day of September, A. D. 1914, S. T. Hills, one of the above-named plaintiffs was also appointed coreceiver, by the said Superior Court of King County, State of Washington, in said case of Roy W. Niven vs. Pacific Coast & Norway Packing Company aforesaid, to act as advisory receiver with the said E. Schoenwald. That immediately thereafter and on, to wit, the — day of September, A. D. 1914 the said S. T. Hills filed his bond as such coreceiver, which was duly and regularly approved, and he duly and regularly qualified as such coreceiver and has ever since and now is one of the receivers of the said Pacific Coast & Norway Packing Company.

III.

That the respective appointments of said plaintiffs

*Page-number appearing at foot of page of original certified Record.

as receivers of said Pacific Coast & Norway Packing Company was voluntary on the part of the said Pacific Coast & Norway Packing Company and at the suggestion and with the acquiescence, assistance and consent of said company and was done solely for the purpose of preserving and keeping intact the property and assets of said company and preventing forced sales thereof by reason of certain suits which had been brought against said company shortly prior to the time of such appointment of said receivers, and in order to prevent dissipation of the assets of said company by reason of such forced sales of the property of said company under execution, or otherwise, and for the [2] purpose of protecting the creditors of said company; that at the time of the appointment of said plaintiffs as receivers as aforesaid the assets of said Pacific Coast & Norway Packing Company exceeded the liabilities against said company and the appointment of the plaintiffs as receivers was for the purpose of protecting and preserving the assets of said company so that the creditors of said company could have their claims against said company paid in full.

IV.

That on, to wit, the 26th day of October, A. D. 1914, the said Pacific Coast & Norway Packing Company voluntarily and of its own free will and accord and for the benefit of all the creditors of said company, by good and sufficient deed of conveyance, conveyed all of its property, both real and personal, situate in the Territory of Alaska, unto the said plaintiff, E. Schoenwald and S. T. Hills, as receivers and as-

signees of said company, as aforesaid. for the benefit of all the creditors of said company. That said deed of conveyance included and conveyed the power seine boat "Bernice," owned by the said Pacific Coast & Norway Packing Company and hereinafter referred to and mentioned; that said deed of conveyance was within a few days thereafter filed for record and recorded in the office of the United States Recorder of the Wrangell Precinct, at Wrangell, Alaska, that being the precinct within which said property of said company was situate.

V.

That the defendant, McDonald, was advised and well knew of the appointment of said plaintiffs as receivers as hereinbefore set forth, and well knew and had [3] full notice that the Pacific Coast & Norway Packing Company had conveyed all of its property, both real and personal, including said power seine boat "Bernice" unto said plaintiffs herein as receivers and assignees of said corporation, for the benefit of its creditors, and said defendant well knew and was informed that the appointment of said receivers and the conveyance of the property by said company to said receivers as assignees were voluntary and made and done for the purpose of protecting and preserving the assets of said Pacific Coast & Norway Packing Company for the benefit of its creditors, including the said McDonald, and that said assets, if properly preserved and protected, exceeded the liabilities of said corporation; that said defendant, McDonald, with full knowledge and notice, both actual and constructive, consented to and acquiesced

in the said deed of conveyance, conveying the property of said Pacific Coast & Norway Packing Company, including said power seine boat "Bernice," to said receivers and assignees.

VI.

That immediately after the appointment of E. Schoenwald, one of the plaintiffs herein, as receiver as aforesaid, the said Schoenwald, as such receiver, took possession of said power seine boat "Bernice" and at the time of the conveyance of said power seine boat "Bernice" and other property by said Pacific Coast & Norway Packing Company to said Schoenwald and Hills, as receivers, as hereinbefore fully set forth, the said power seine boat "Bernice" was then in the actual possession of said receivers who were using and operating the same in the conduct of the business being carried on by them as such receivers of said Pacific Coast & Norway Packing Company and at the time of the attachment made by the defendant herein, as hereinafter more fully set [4] forth and described, the said Schoenwald and Hills as such receivers and assignees had the title to such power seine boat "Bernice" under the said deed from said Pacific Coast & Norway Packing Company conveying said boat to them, and had at said time, and for some time prior thereto, possession of said power seine boat "Bernice." That said deed of conveyance from said Pacific Coast & Norway Packing Company conveying said boat "Bernice" to said receivers as aforesaid was long prior to the attachment of said boat "Bernice" by the defendant, hereinafter referred to and described.

VII.

That several months after the conveyance of said power seine boat "Bernice" by said Pacific Coast & Norway Packing Company unto the said Schoenwald and Hills, receivers and assignees as aforesaid, and long after the appointment of said Schoenwald and Hills as receivers of the Pacific Coast & Norway Packing Company, the defendant, D. N. McDonald, brought an action against said Pacific Coast & Norway Packing Company, being cause No. 1137-A of this court, to recover judgment upon two certain promissory notes in the complaint in said action set out and described, and in connection with said cause No. 1137-A, and on, to wit, the — day of January, A. D. 1915, sued out and placed in the hands of the United States Marshal writ of attachment, and Harry A. Bishop, United States Marshal for the District of Alaska, Division Number One, one of the above-named defendants, wrongfully attached under said writ and made levy upon the power seine boat "Bernice," at Petersberg, Alaska; and without the plaintiffs' consent the said defendant, Harry A. Bishop, at Petersburg, Alaska, wrongfully and unlawfully took the power seine boat "Bernice" from the possession of the plaintiffs. That as hereinbefore alleged, at the time of such attachment and levy and [5] for a long time prior thereto the title, possession and right of possession to said power seine boat "Bernice" was in the plaintiffs as such receivers and assignees as aforesaid, and such title is now and has been ever since the said 25th day of October, A. D. 1914, and long prior to the attachment and levy

aforesaid in the plaintiffs as receivers and assignees as aforesaid.

VIII.

That before the commencement of this action, to wit, on the 24th day of April, A. D. 1915, and on several occasions prior and subsequent thereto, the plaintiffs demanded of the defendants possession of said power seine boat "Bernice"; that said defendants still wrongfully and unlawfully withhold and detain said power seine boat "Bernice" within the first judicial division of Alaska from the possession of the plaintiff to their damage in the sum of \$500, that being the reasonable worth and value of the use of said boat "Bernice" during said time that plaintiffs have been deprived thereof.

IX.

That the defendant under the attachment hereinbefore described will have execution issued and the said power seine boat sold to satisfy the claim or judgment of the defendant, D. N. McDonald, against the Pacific Coast & Norway Packing Company in said cause No. 1137-A of this court as aforesaid, unless redelivery of said power seine boat "Bernice" is made to the plaintiffs; that said defendants wrongfully and unlawfully withhold and detain said power seine boat from the possession of the plaintiffs.

X.

That said power seine boat "Bernice" is of the value of approximately \$2,000; that the plaintiffs have [6] demanded of the defendant possession of said boat, but the defendants refuse to redeliver the same to the plaintiffs, and defendants still wrongfully

and unlawfully detain the same from the possession of the plaintiffs.

XI.

That said power seine boat "Bernice" has not been taken for a tax assessment or fine pursuant to a statute or seized under an execution or attachment against the property of the plaintiffs.

WHEREFORE the plaintiffs demand judgment against the defendants,—

FIRST. For the recovery of the possession of said power seine boat "Bernice," or for the value thereof in case a delivery cannot be made.

SECOND. For \$500 damages and the costs of suit.

WINN & BURTON,
Attorneys for Plaintiffs.

United States of America,
Territory of Alaska,—ss.

E. Schoenwald, being first duly sworn, on oath deposes and says: I am one of the plaintiffs in the above-entitled cause; I have read the foregoing complaint, know the contents thereof and believe the same to be true.

E. SCHOENWALD.

Subscribed and sworn to before me this 28th day of April, A. D. 1915.

[Notarial Seal] NEWARK L. BURTON,
Notary Public for Alaska.

My commission expires November 8, 1917.

Filed in the District Court, District of Alaska,
First Division. Apr. 28, 1915. J. W. Bell, Clerk.
By —————, Deputy.

[Endorsed]: In the District Court for the Territory of Alaska, Division No. 1. E. Schoenwald and S. T. Hills and E. Schoenwald and S. T. Hills, as Receivers and Assignees of the Pacific Coast & Norway Packing Company, a Corporation, Plaintiff, vs. Harry A. Bishop, as United States Marshal for the District of Alaska, Division Number One, and D. N. McDonald, Defendants. Complaint. Winn & Burton, Attorneys for Plaintiffs, Juneau, Alaska. [7]

*In the District Court for the District of Alaska,
Division Number One, at Juneau.*

No. 1264-A.

E. SCHOENWALD and S. T. HILLS and E.
SCHOENWALD and S. T. HILLS, as Re-
ceivers and Assignees of the PACIFIC
COAST & NORWAY PACKING COM-
PANY, a Corporation,

Plaintiffs,

vs.

HARRY A. BISHOP, as United States Marshal for
the District of Alaska, Division Number One,
and D. N. McDONALD,

Defendants.

Answer.

COME NOW the defendants herein and, for answer to Plaintiff's Complaint, allege, admit and deny as follows, to wit:

I.

Answering paragraphs I, II, III, IV, V, VI, VII, VIII, IX, X, XI of said Complaint, defendants deny

each and every allegation contained in said paragraphs, and in each of them, save and except as hereinafter specifically admitted; and save and except the allegation as to the value of the boat "Bernice" as set forth in paragraph X of the complaint.

AND AS A FURTHER SEPARATE AND FIRST AFFIRMATIVE DEFENSE, the defendants allege:

I.

That on the 25th day of January, 1915, D. N. McDonald, one of the defendants herein, duly commenced an action in the above-entitled court against the Pacific Coast & Norway Packing Company, a corporation, which action is Number 1217-A of the records and files of this court, for the recovery of judgment on two promissory notes, the principal of which aggregated [8] \$1,404.89, together with interest thereon, and attorneys' fees and costs of said suit; that the transactions out of which said action arose all occurred in the Territory of Alaska; and that at the time of the commencement of said suit, and of the accruing of the cause of action therein sued on, and for many years prior thereto, and at all times since, the said McDonald has been, and is now, a resident and citizen of the Territory of Alaska, residing in the first judicial division thereof.

II.

That on the said date a summons in due form was issued in said cause No. 1217-A, and thereafter and on said day said McDonald duly filed therein his affidavit and undertaking for attachment; and thereupon and on said day the clerk of this court, under the

seal thereof, duly issued a writ of attachment in said action, directing the defendant Harry A. Bishop as United States Marshal for the first division of said Territory of Alaska, to attach and safely keep sufficient property of said Pacific Coast & Norway Packing Company which could be found in said Territory to cover said demand so made by said defendant McDonald against said company; and that thereafter said summons and said writ of attachment were duly placed in the hands of said defendant Bishop, as such United States Marshal, for service; and that thereafter, and on February 4, 1915, said summons was by him, as such Marshal, duly served on said Pacific Coast & Norway Packing Company at Petersburg, Alaska, by delivering to its duly appointed statutory and managing agent a true copy thereof, to which was attached a copy of the complaint therein; and that thereafter, and on February 4, 1915, said writ of attachment was by him, as such Marshal, duly served on said Pacific Coast & Norway Packing Company at Petersburg, Alaska, by delivering to its duly appointed statutory and managing agent a true copy of said writ, and thereafter and on February 4, 1915, due levy was made by him, as such Marshal, upon the gasoline vessel "Bernice," her engine, machinery, tackle, equipment and furniture, by taking [9] said vessel, her engine, machinery, tackle, equipment and furniture into his possession and custody, and placing a keeper in charge thereof, at Petersburg, Alaska, under and by virtue of said writ; that said vessel at the time of the making and levy of said attachment, and at all times since prior to September

1, 1914, had been and is now an American licensed vessel of over the burden of five net tons, to wit, eleven net tons, and was at the time of the making and levy of said attachment, and at all times since prior to September 1, 1914, up to and until a long time subsequent to said levy was documented and licensed in the United States Customs District of Alaska.

III.

That thereafter, and on April 20, 1915, a trial was duly had in said cause No. 1217-A, and thereafter and on April 28, 1915, judgment was duly made, rendered, and entered in said action in the above-entitled court, against said Pacific Coast & Norway Packing Company, a corporation, and in favor of said D. N. McDonald for the sums of \$702.44, with interest at seven per cent per annum from October 26, 1914, and \$702.45, with interest at seven per cent per annum from November 25, 1914, and for \$300 as attorneys' fees, and for his costs and disbursements in said action to be taxed by the clerk; and that said judgment further ordered and adjudged that said gasoline vessel be sold by said defendant Bishop, as such Marshal, to satisfy the demands of said defendant McDonald obtained in said cause No. 1217-A as above stated.

IV.

That at the time of the rendering, making and entering of said judgment in said cause No. 1217-A, said defendant Bishop, as such Marshal, was in the possession and custody of said gasoline vessel, her engine, machinery, tackle, equipment and furniture, under and by virtue of said writ of attachment, and

he continued, and at all times thereafter was, under and by virtue of said writ and of said judgment in the possession and custody thereof, up to and until three days [10] after the commencement of this suit, at which time he, as such Marshal, delivered and surrendered the possession of said vessel, her engine, machinery, tackle, equipment and furniture, to plaintiffs herein under a bond given in this suit for that purpose; and that it was, and is now, the intention of the defendant McDonald to cause an execution to be issued out of this court and due levy made thereof for the sale of said gasoline vessel to satisfy his demands rendered to judgment so obtained in said cause No. 1217-A.

V.

That at the time of the commencement of said cause No. 1217-A, and at the time of the levying of said writ of attachment in said cause, and for a long time prior to both of said occasions, and at all times since prior to September 1, 1914, and at the present time, said gasoline vessel "Bernice," her engine, tackle, machinery, equipment and furniture, was, has been and is the property of the Pacific Coast & Norway Packing Company, a corporation, and does now so remain its property, and at all of said times the said vessel, her engine, tackle, machinery, equipment and furniture, was subject to attachment and execution as the property of said company in said cause No. 1217-A, and at all of said times and since prior to September 1, 1914, the said vessel, was, and is now, in the Territory of Alaska, and within the jurisdiction of this court.

VI.

That the plaintiffs are, and each of them is, threatening and attempting to wrongfully and unlawfully prevent, hinder, delay and defraud the said defendant McDonald in the satisfaction of his demands and claim against the said Pacific Coast & Norway Packing Company so obtained and reduced to judgment in said cause No. 1217-A and to wrongfully and unlawfully withdraw and remove said gasoline vessel from the control and jurisdiction of this court in order to accomplish said purpose; and that the said plaintiff's will, as defendant McDonald fears, unless restrained by this Honorable Court, carry out and perform their said wrongful and unlawful threats, attempts [11] and acts; and that, if said plaintiffs be permitted so to do, the defendant McDonald will be irreparably injured, prejudiced and damaged in that he will not be able to obtain satisfaction of his just demand against said company in the Territory of Alaska, whereof he is, and has been for many years, a citizen and resident; and which said demand was reduced to judgment as aforesaid in cause No. 1217-A of this court.

AND AS A FURTHER, SEPARATE AND SECOND AFFIRMATIVE DEFENSE, defendants allege:

I.

That the plaintiffs are not the real parties, and neither of the plaintiffs is, the real party, in interest in this action;

AND AS A FURTHER, SEPARATE AND THIRD AFFIRMATIVE DEFENSE, defendants allege:

I.

That this Honorable Court has no jurisdiction of the alleged cause of action set forth in plaintiffs' complaint, and has no jurisdiction over the defendants, or either of them;

AND AS A FURTHER, SEPARATE AND FOURTH AFFIRMATIVE DEFENSE, defendants allege:

I.

That plaintiffs have no right, and neither of them has any right, to bring this action in the courts of the territory or of the district of Alaska, and that said plaintiffs are, and each of them is, without legal capacity to prosecute said suit in the courts of the territory or of the district of Alaska.

WHEREFORE, defendants pray that they go hence without day, and that plaintiffs take nothing by this action; and that the plaintiffs return and restore, and make restitution of, said gasoline vessel, her engine, machinery, tackle, furniture and [12] equipment, to the defendant Harry A. Bishop, as such United States Marshal; and that the plaintiffs, and each of them, be permanently restrained and enjoined from withdrawing or removing said vessel from the jurisdiction of this court; and that defendants have their costs and disbursements herein incurred; and for such other and further relief as may be just and proper in the premises.

GUNNISON & ROBERTSON,
Attorneys for Defendants.

United States of America,
Territory of Alaska,
Divison Number One,—ss.

D. N. McDonald, being first duly sworn, on oath deposes and says: That he is one of the defendants in the foregoing entitled action; that his codefendant, Harry A. Bishop, is now absent from and without the District of Alaska; that he has read the foregoing Answer, and knows the contents thereof, and that the same are true as he verily believes.

D. N. McDONALD.

Subscribed and sworn to before me this 26th day of June, 1915.

My commission expires June 19, 1917.

[Notarial Seal] R. E. ROBERTSON,
Notary Public in and for the Territory of Alaska.

Receipt of copy and due service of the within Answer admitted this 28 day of June, 1915.

WINN & BURTON,
Attorneys for Plaintiff.

Filed in the District Court, District of Alaska,
First Division. Jun. 28, 1915. J. W. Bell, Clerk.
By ———, Deputy.

[Endorsed]: No. 1264—A. In the District Court for the Territory of Alaska, Division No. 1. E. Schoenwald and S. T. Hills and E. Schoenwald and S. T. Hills as Receivers and Assignees of the Pacific Coast & Norway Packing Company, Plaintiffs, vs. Harry A. Bishop and D. N. McDonald, Defendants.

Answer. Gunnison & Robertson, Attorneys for Defendants, 101-105 Decker Building, Juneau, Alaska. [13]

*In the District Court for the District of Alaska,
Division Number One, at Juneau.*

No. 1264-A.

E. SCHOENWALD and S. T. HILLS and E.
SCHOENWALD and S. T. HILLS, as Re-
ceivers and Assignees of the PACIFIC
COAST & NORWAY PACKING COM-
PANY, a Corporation,

Plaintiffs,

vs.

HARRY A. BISHOP, as United States Marshal for
the District of Alaska, Division Number One,
and D. N. McDONALD,

Defendants.

Motion to Strike Portions of Answer.

Come now the above-named plaintiffs by their attorneys, Winn & Burton, and move the Court to strike from the Answer filed in said above-entitled cause all of the second, third and fourth affirmative defenses in said Answer contained for the following reason and upon the following grounds, to wit, namely:

I.

That said above-named affirmative defenses allege and raise issues of conclusions of law and can only be reached by demurrer.

II.

That each and all of said above-named affirmative defenses have been presented by the defendants by written motions and demurrer filed in said above-entitled cause and argued before the above-entitled court, and have been fully passed upon and adjudicated by the above-entitled Court, and the defendants compelled to answer the allegations of the complaint.

Reference is made to the records and files in said above-entitled cause in support of the foregoing motion.

WINN & BURTON,
Attorneys for Plaintiffs.

Received copy of foregoing motion this 7th day of July, A. D. 1915.

GUNNISON & ROBERTSON,
Attorneys for Defendants.

Filed in the District Court, District of Alaska, First Division. Jul. 7, 1915. J. W. Bell, Clerk.
By ———, Deputy.

[Endorsed]: No. 1264-A. In the District Court for the Territory of Alaska, Division No. 1. E. Schoenwald and S. T. Hills et al., Plaintiffs, vs. Harry A. Bishop and D. N. McDonald, Defendants. Motion. Winn & Burton, Attorneys for Plaintiffs, Juneau, Alaska. [14]

*In the District Court for the District of Alaska,
Division Number One, at Juneau.*

No. 1264-A.

E. SCHOENWALD and S. T. HILLS, and E.
SCHOENWALD and S. T. HILLS, as Re-
ceivers and Assignees of the PACIFIC
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PANY, a Corporation,

Plaintiffs,

vs.

HARRY A. BISHOP, as United States Marshal for
the District of Alaska, Division Number One,
and D. N. McDONALD,

Defendants.

Demurrer.

Come now the plaintiffs herein by their attorneys,
Winn & Burton, and demur to the first affirmative
defense contained in the Answer herein, for the fol-
lowing reason and upon the following ground, to wit,
namely:

I.

That said further, separate and first affirmative
defense contained in said Answer does not state facts
sufficient to constitute a defense to the matters and
things set forth in the Complaint filed in said above-
entitled cause.

WINN & BURTON,
Attorneys for Plaintiffs.

Received copy of foregoing Demurrer this 7th day of July, A. D. 1915.

GUNNISON & ROBERTSON,
Attorneys for Defendants.

Filed in the District Court, District of Alaska, First Division. Jul. 7, 1915. J. W. Bell, Clerk. By —————, Deputy.

[Endorsed]: No. 1264-A. In the District Court for the Territory of Alaska, Division No. 1. E. Schoenwald and S. T. Hills et al., Plaintiffs, vs. Harry A. Bishop and D. N. McDonald, Defendants. Demurrer. Winn & Burton, Attorneys for Plaintiffs, Juneau, Alaska. [15]

*In the District Court for the District of Alaska,
Division Number One, at Juneau.*

No. 1264-A.

E. SCHOENWALD and S. T. HILLS, and E. SCHOENWALD and S. T. HILLS, as Receivers and Assignees of the PACIFIC COAST & NORWAY PACKING COMPANY, a Corporation,

Plaintiffs,

vs.

HARRY A. BISHOP, as United States Marshal for the District of Alaska, Division Number One, and D. N. McDONALD,

Defendants.

**Order Overruling Motion to Strike Portions of
Answer.**

Now, on this day this matter coming on in court on motion of the defendants for the correction of the Journal of this court containing the minutes of the transactions had on the plaintiff's motion to strike the second, third and fourth affirmative defenses of the defendants herein, and the plaintiffs being present in court by their attorneys, Messrs. Winn & Burton, and the Court being fully advised in the premises.

IT IS HEREBY ORDERED, That said motion to strike the second, third and fourth affirmative defenses of the defendants' answer be, and the same is hereby, overruled.

Done in open court this 20th day of December, 1915.

ROBERT W. JENNINGS,
Judge of the District Court.

Entered Court Journal No. L, page 256.

Filed in the District Court, District of Alaska,
First Division. Dec. 20, 1915. J. W. Bell, Clerk.
By ———, Deputy.

[Endorsed]: No. 1264-A. In the District Court for the Territory of Alaska, Division No. 1. E. Schoenwald and S. T. Hills and E. Schoenwald and S. T. Hills as Receivers and Assignees of the Pacific Coast & Norway Pkg. Co., a Corporation, Plaintiffs, vs. Harry A. Bishop, as United States Marshal for the District of Alaska, Division Number One, and D. N. McDonald, Defendants. Order. Gunnison &

Robertson, Attorneys for Defendants, 101-105 Decker Building, Juneau, Alaska. [16]

*In the District Court for the District of Alaska,
Division Number One, at Juneau.*

No. 1264-A.

E. SCHOENWALD and S. T. HILLS, and E.
SCHOENWALD and S. T. HILLS, as Re-
ceivers and Assignees of the PACIFIC
COAST & NORWAY PACKING COM-
PANY, a Corporation,

Plaintiffs,

vs.

HARRY A. BISHOP, as United States Marshal for
the District of Alaska, Division Number One,
and D. N. McDONALD,

Defendants.

Reply.

Come now the above-named plaintiffs by their attorneys, Winn & Burton, and for Reply to the defendants' Answer herein, allege, admit and deny as follows:

Replying to the first affirmative defense, plaintiffs allege, admit and deny as follows:

I.

Replying to paragraph I of the first affirmative defense contained in said Answer, plaintiffs have not sufficient knowledge or information upon which to base a belief as to whether or not D. N. McDonald, one of the above-named defendants herein was at the time of the commencement of cause No. 1217-A de-

scribed in said paragraph I of the first affirmative defense, and of the accruing of a cause of action therein sued on, and for many years prior thereto, and at all times since, and is now a resident and citizen of the Territory of Alaska, residing in the First Judicial Division thereof, and therefore deny the same.

II.

Replying to paragraph V of the first affirmative defense contained in said Answer, plaintiffs admit that the [17] gasoline boat "Bernice," at the time of the commencement of cause No. 1217-A referred to in said paragraph V of defendants' Answer herein, and at the time the attachment and levy in said cause 1217-A, was in the Territory of Alaska and within the jurisdiction of this court, but as to whether or not said gasoline boat, "Bernice," was, prior to September 1, 1914, or at any time prior to the appointment of plaintiffs as receivers on the 16th day of September, 1914, within the Territory of Alaska and within the jurisdiction of this court, plaintiffs have not sufficient information or knowledge upon which to base a belief and therefore deny the same; deny each and every other allegation of said paragraph V of said first affirmative defense in said Answer contained.

III.

Replying to paragraph VI of the first affirmative defense in said Answer contained, plaintiffs deny each and every allegation therein contained.

And replying to paragraph I of the second affirmative defense contained in said Answer of the above-named defendants, plaintiffs deny as follows:

I.

Deny each and every allegation in said paragraph I of said second affirmative defense in said Answer contained.

WINTON & BURTON,
Attorneys for Plaintiffs. [18]

United States of America,
Territory of Alaska.

Newark L. Burton, being first duly sworn, on oath deposes and says: That I am *one the* attorneys in the above-entitled cause; that I have read over the reply, know the contents thereof, and that I verily believe the same is true; that affiant makes this affidavit for the reason that the plaintiffs are nonresidents of Alaska, and so far as affiant knows are not now within said Territory.

NEWARK L. BURTON.

Subscribed and sworn to before me this 2d day of August, 1915.

[Notarial Seal]

ROSE A. STODDARD,
Notary Public for Alaska.

My commission expires Feb. 25, 1918.

Service of foregoing is admitted this 2d Aug., A. D. 1915.

GUNNISON & ROBERTSON,
Attorneys for Defts.

Filed in the District Court, District of Alaska, First Division, Aug. 2, 1915. J. W. Bell, Clerk, By
———, Deputy.

[Endorsed]: No. 1264-A. In the District Court for the Territory of Alaska. Division No. 1. E.

Schoenwald et al., Plaintiffs, vs. Harry A. Bishop, et al., Defendants. Reply. Winn & Burton, Attorneys for Plaintiffs, Juneau, Alaska. [19]

*In the District Court for the District of Alaska,
Division No. 1 at Juneau.*

No. 1264-A.

E. SCHOENWALD and S. T. HILLS, et al.

vs.

HARRY A. BISHOP, etc., et al.

Minutes of Court—December 22, 1915.

CONTINUATION OF TRIAL.

Now at this time the trial of this case is resumed before the Court and jury with appearances as of yesterday. The jury are present, and each juror answers to the calling of his name.

Thereupon the motion of the defendants for a non-suit is denied, and the defendants offering no testimony, rest their case. After defendants and plaintiffs move for directed verdicts, counsel for both sides being willing and consenting thereto, the jury herein are discharged, and the case is submitted to the Judge, and continued for further arguments to Monday, December 27, 1915.

Wednesday, December 22, 1915.

ROBERT W. JENNINGS,
District Judge. [20]

*In the District Court for the District of Alaska,
Division Number One, at Juneau.*

No. 1264-A.

E. SCHOENWALD and S. T. HILLS and E.
SCHOENWALD and S. T. HILLS, as Re-
ceivers and Assignees of the Pacific Coast &
NORWAY PACKING COMPANY, a Cor-
poration,

OK

Plaintiffs,

W&B

vs.

HARRY A. BISHOP, as United States Marshal for
the First Division of the District of Alaska,
and D. N. McDONALD,

Defendants.

Judgment.

This case came on for hearing on the 20th day of December, 1915; the parties being represented by their respective counsel and announcing ready for trial; thereupon trial was duly had on the complaint, answer and reply; and the plaintiffs, having introduced evidence in their behalf, rested; and the defendants introducing no evidence thereupon rested; whereupon it was agreed in open court and entered of record that the jury theretofore empanelled in the cause might be discharged and the matter submitted to the Court for decision on the pleadings and the evidence; and the jury having thereupon been discharged, both sides moved for judgment; and thereafter, argument by respective counsel having been had, the Court took the matter under advisement and on the 3d day of January, 1916, ren-

dered its opinion in favor of defendants, and directed findings in accordance therewith; and the Court, having heretofore made and entered its Findings of Fact and Conclusions of Law herein and being fully advised in the premises,

DOTH ORDER AND ADJUDGE and it is hereby ordered and adjudged that the plaintiffs take nothing by their action.

AND IT IS FURTHER ORDERED AND ADJUDGED that the plaintiffs [21] return and restore, and make restitution of, the gasolene power seine boat or vessel "Bernice," her engine, tackle, equipment, machinery and furniture to the defendants, or, if return thereof cannot be had, that the defendants have and recover from the plaintiffs the sum of two thousand dollars, being the value of said vessel.

AND IT IS FURTHER ORDERED AND ADJUDGED that defendants have and recover from plaintiffs their costs and disbursements herein, to be taxed by the clerk.

And it is ordered that execution be stayed thirty days.

Done in open court this 8th day of February, 1916.

ROBERT W. JENNINGS,
Judge of the District Court.

Entered Court Journal, No. L, pages 336-337.

Copy of the within received this — day of Jany. 1916.

Of Counsel for Plffs.

Filed in the District Court, District of Alaska, First Division. Feb. 8, 1916. J. B. Bell, Clerk. By C. Z. Denny, Deputy.

[Endorsed]: No. 1264-A. In the District Court for the Territory of Alaska, Division No. 1. E. Schoenwald and S. T. Hills and E. Schoenwald and S. T. Hills as Receivers and Assignees of the Pacific Coast & Norway Pkg. Co., a Corporation, Plaintiffs vs. Harry A. Bishop, as United States Marshal for the First Division of the District of Alaska, and D. N. McDonald, Defendants. Judgment. Gunnison & Robertson, Attorneys for Defendants. 101-105 Decker Building, Juneau, Alaska. [22]

In the District Court for the District of Alaska, Division Number One, at Juneau.

No. 1264-A.

E. SCHOENWALD and S. T. HILLS, and E. SCHOENWALD and S. T. HILLS, as Receivers and Assignees of the PACIFIC COAST & NORWAY PACKING COMPANY, a Corporation.

Plaintiffs,

vs.

HARRY A. BISHOP, as United States Marshal for the First Division of the District of Alaska, and D. N. McDONALD.

Motion for New Trial.

Come now the above-named plaintiff, by their attorneys, Winn & Burton, and feeling themselves

aggrieved, by the Findings of Fact and Conclusions of Law made, rendered and filed herein by the Court, move the Court to set aside the following Findings of Fact and Conclusions of Law, and to grant a new trial herein upon the following grounds and for the following reasons:

I.

Finding of Fact No. VII, and especially all of that portion of said Finding wherein it is stated that the deed of conveyance from the Pacific Coast & Norway Packing Company of its property to the receivers mentioned therein was made under and by virtue of the order referred to herein made by the Superior Court of the State of Washington for King County, for the reason that said Finding is not supported by any evidence in the case whatsoever but on the contrary the evidence shows that the transfer was voluntarily made by said corporation for the benefit of all its creditors and not in pursuance of any order of the Court, or any law governing receiverships in the State of Washington but that the court was simply asked [23] to ratify the free and voluntary act and deed of said corporation in the making of said conveyance, and that said Finding is against law.

II.

Finding of Fact No. VIII for the reason that said Finding of Fact is not supported by any evidence in said cause, and is contrary to the evidence, and particularly there is no evidence to support the following portion of said Finding:—"in any capacity or at all, nor at all ratified nor acquiesced in any

such assignment, or in said receivership proceedings.” On the contrary the undisputed evidence shows that the said corporation did ratify and acquiesce in the assignment made under the deed to the said Schoenwald and Hills, and did participate in the receivership proceedings, and that said Finding is against law.

III.

Finding of Fact No. XIII for the reason that said Finding is against the undisputed testimony and evidence in this cause and is not supported by any testimony and evidence, and is against law.

IV.

Conclusion of Law No. 1 for the reason there is no testimony or evidence in said cause to support said Conclusion of Law. In fact that said conclusion is contrary to all the evidence in said cause, and is against law.

V.

Conclusion of Law No. II for the reason there is no testimony or evidence in said cause to support said Conclusion of Law. In fact that said conclusion is contrary to all the evidence in said cause, and is against law.

WINN & BURTON,

Attorneys for Plaintiff.

Due service of the within Motion accepted this 3d day of February, A. D. 1916.

GUNNISON & ROBERTSON,

Attorneys for Defendants.

Filed in the District Court, District of Alaska, First Division. Feb. 3, 1916. J. W. Bell, Clerk. By C. Z. Denny, Deputy.

[Endorsed]: In the District Court for the Territory of Alaska, Division No. 1. E. Schoenwald et al., Plaintiffs, vs. Harry A. Bishop et al., Defendants. Motion for New Trial. Winn & Burton, Attorneys for Plaintiffs, Juneau, Alaska. [24]

In the District Court for the District of Alaska, Division Number One, at Juneau.

No. 1264-A.

E. SCHOENWALD et al.,

vs.

HARRY A. BISHOP, etc., et al.

Order Denying Motion for New Trial.

Now, at this time, comes on regularly for hearing plaintiff's motion for a new trial herein. N. L. Burton, Esquire, appears in support of the motion, and R. E. Robertson, Esquire, in opposition thereto.

After hearing the argument of Mr. Burton, in support of the motion, the motion is denied.

Monday, February 7, 1916.

ROBERT W. JENNINGS,

District Judge. [25]

*In the District Court for the District of Alaska,
Division No. 1, at Juneau.*

No. 1264-A.

E. SCHOENWALD and S. T. HILLS, and E.
SCHOENWALD and S. T. HILLS, as Re-
ceivers and Assignees of the PACIFIC
COAST & NORWAY PACKING COM-
PANY, a Corporation,

Plaintiffs,

vs.

HARRY A. BISHOP, as United States Marshal for
the First Division of the District of Alaska,
and D. N. McDONALD,

Defendants.

**Order Extending Time to Prepare, etc., Bill of
Exceptions.**

Upon application of plaintiffs in the above-
entitled cause by their attorneys, Winn & Burton,—

IT IS HEREBY ORDERED that the time within
which the above-named plaintiffs may prepare and
present to the Court for signing and filing a Bill of
Exceptions in the above-entitled cause shall be, and
the same is hereby, extended for thirty (30) days
from this date.

Done in open court this 4th day of March, A. D.
1916.

ROBERT W. JENNINGS,
Judge.

Entered Court Journal No. L, page 359.

Filed in the District Court, District of Alaska, First Division, Mar. 4, 1916. J. W. Bell, Clerk. By C. Z. Denny, Deputy.

[Endorsed]: No. 1264-A. In the District Court for the Territory of Alaska, Division No. 1. E. Schoenwald, et al., Plaintiffs, vs. Harry A. Bishop et al., Defendants. Order. Winn & Burton, Attorneys for Plaintiffs, Juneau, Alaska. [26]

In the District Court for the District of Alaska, Division Number One, at Juneau.

No. 1264-A.

E. SCHOENWALD and S. T. HILLS, and E. SCHOENWALD and S. T. HILLS, as Receivers and Assignees of the PACIFIC COAST & NORWAY PACKING COMPANY, a Corporation,

Plaintiffs,

vs.

HARRY A. BISHOP, as United States Marshal for the District of Alaska, Division Number One, and D. N. McDONALD,

Defendants.

Assignment of Errors.

Come now the above-named plaintiffs, and assign the following errors committed by the Court on the trial and determination of the above-entitled cause and in the Findings of Fact and Conclusions of Law made by the Court and upon the rendition of Judgment in favor of defendants herein, and upon which

plaintiffs rely in the Appellate Court, to wit, viz:

I.

The Court erred in overruling and denying plaintiffs' motion to strike from defendants' Answer all those portions of the same and each and every part thereof moved against in the Motion of plaintiffs filed herein on July 7, 1915.

II.

The Court erred in overruling plaintiffs' Demurrer to the defendants' separate and first affirmative defense [27] contained in defendants' answer, which said demurrer is filed herein on July 7, 1915.

III.

The Court erred in sustaining defendants' objection by striking out that part of the Answer contained in the deposition of L. C. Kells, being answer to direct interrogatory No. 13 propounded to said Kells, and which said part of said answer so stricken reads as follows:

“It was considered that it would be much more economical and harmonious if the company's management was unified in their hands. It was contemplated that this could be accomplished either by having the Washington receivers made ancillary receivers in Alaska or by transferring legal title to the Alaska assets to the receivers by a common law transfer. When it was found that the receivers in Washington probably could not be made sole ancillary receivers in Alaska, it was decided to adopt the other alternative. Mr. Smith cabled directions

to me as to preparing the instruments, having them executed and getting the Court's approval. I got Mr. Schoenwald and Mr. Steberg, the president of the company, in the office. I acquainted them with the contents of Mr. Smith's cable, dictated the deed and bill of sale and the order of court sanctioning the arrangement. While the instruments were being prepared we three went together before the Court with the order. I acquainted the judge with the contents of Mr. Smith's cable, which he read, and explained the purpose of the transfer, telling the Court that all interested parties were agreeable to the plan. The judge then asked Mr. Steberg whether the company desired to make the transfer. Mr. Steberg answered in the affirmative. The Court then asked Mr. Schoenwald if the receivers favored this plan and he assented. The Court then signed the order."

for the reason and upon the ground that the part so stricken was fully responsive to the question and stated the facts under which the order of the Superior Court of King County, Washington, was obtained; and the bill of sale conveying the gasoline boat, "Bernice," which was the subject of the action in the above-entitled cause was executed; and the whole of said stricken portion of the answer aforesaid was relevant and material in the above-entitled cause for the purpose of showing that the execution of the bill of sale was voluntary and the order of the Court a voluntary proceeding. [28]

IV.

The Court erred in sustaining defendants' objection by striking out that part of the Answer contained in the deposition of L. C. Kells in answer to direct interrogatory No. 19, propounded to said Kells, and which said part of said answer so stricken reads as follows:

“The creditors have approved all the measures taken”;

for the reason and upon the ground that such testimony was material and relevant to show consent and such testimony was for the purpose of establishing the fact that the execution of the bill of sale and the order of the Superior Court of Washington were voluntary and without coercion or compulsion of law.

V.

The Court erred in sustaining defendants' objection by striking out that part of the Answer contained in deposition of L. C. Kells in answer to cross-interrogatory No. 30 propounded to said Kells, and which said part of said answer so stricken reads as follows:

“And the company and creditors concurred in the petition”;

for the reason and upon the ground that such testimony was material and relevant to show consent and such testimony was for the purpose of establishing the fact that the execution of the bill of sale and the order of the Superior Court of Washington were voluntary and without coercion or compulsion of law.

VI.

The Court erred in sustaining defendants' objection by striking out that part of the answer contained in the deposition of L. C. Kells in answer to cross-interrogatory No. 36 propounded to said Kells, and which said part of said answer so stricken reads as follows: [29]

"The Court found that its assets exceeded its liabilities but appointed the receivers upon the statutory grounds that its property was in danger of being lost or materially impaired in value, and that it was in imminent danger of insolvency";

for the reason and upon the ground that said testimony was relevant and material to prove or establish that the receivers were not appointed by reason of the insolvency of the Pacific Coast & Norway Packing Company, which is in itself a fact taken in connection with the execution of the bill of sale of the gasoline boat, "Bernice," tending to prove that the proceedings were voluntary and without compulsion of law.

VII.

The Court erred in sustaining defendants' objection by striking out that part of the answer contained in the deposition of C. O. Steberg in answer to cross-interrogatory No. 24, propounded to said Steberg, and which said part of said answer so stricken reads as follows:

"And has been one general committee of all the creditors being one person for each of the four largest unsecured creditors";

for the reason that said answer should have been admitted in response to said cross-interrogatory No. 24 propounded by the defendants and which said cross-interrogatory reads as follows:

“Has a committee of Alaskan creditors been selected and appointed in Alaska to co-operate with Schoenwald and Hills as receivers”;

and is explanatory of the first part of plaintiffs’ answer of “No.”

VIII.

The Court erred in sustaining defendants’ objection by striking out that part of the answer contained in the deposition of C. O. Steberg, in answer to cross-interrogatory No. 26 propounded to said Steberg, and which said part of said answer so stricken reads as follows: [30]

“But the other Alaskan creditors were few and small”;

for the reason that said answer is in response to said cross-interrogatory No. 26 as explanatory thereof.

IX.

The Court erred in sustaining defendants’ objection by striking out that part of the answer contained in the deposition of Winfield R. Smith in answer to interrogatory No. 8, propounded to said Smith, and which said part of said answer so stricken reads as follows:

“That in Washington under the court order, that in Alaska voluntarily”;

for the reason and upon the ground that said evidence was relevant and material and was direct tes-

timony in response to said interrogatory No. 8 that the bill of sale conveying the gasoline boat "Bernise" was a voluntary conveyance.

X.

The Court erred in not making, signing and filing Finding of Fact No. 2 offered by the plaintiffs and reading as follows:

"That the appointment of said plaintiffs, Shoenwald and Hills as receivers of said Pacific Coast & Norway Packing Company was voluntary on the part of said Pacific Coast & Norway Packing Company and at the suggestion and with the acquiescence, assistance and consent of said company and was done solely for the purpose of preserving and keeping intact the property and assets of said company and preventing forced sales thereof by reason of certain suits which had been brought, or were being threatened, and such appointment of said receivers was in order to secure equality among the creditors of the company; that at the time of the appointment of said plaintiffs as receivers, as aforesaid, the assets of said Pacific Coast & Norway Packing Company exceeded the [31] liabilities but such assets could not at said time be realized upon, and in order to protect and preserve the same it was deemed wise to have such receivers appointed to protect all the creditors alike, as aforesaid";

for the reason that the uncontradicted evidence in the case supports said finding and the whole thereof as it appears from said uncontradicted evidence that

the appointment of Schoenwald and Hills as receivers by the Superior Court of King County, Washington, was voluntary and with the acquiescence, assistance and consent of said Pacific Coast and Norway Packing Company.

XI.

The Court erred in not making, signing and filing Finding of Fact No. 3, offered by the plaintiffs and reading as follows:

“That on, to wit, the 26th day of October, 1914, the said Pacific Coast & Norway Packing Company to further protect all the creditors alike and avoid the expense and occasion of appointing ancillary receivers in Alaska, and for the sake of efficient, economic and unified administration of the assets of said Pacific Coast & Norway Packing Company, to the benefit of all the creditors alike, voluntarily and of its own free will and accord, conveyed all of its property, both real and personal, to the said E. Schoenwald and E. T. Hills in trust for the benefit of all creditors of said corporation; the real estate being conveyed by deed and the personal property, including the gasoline boat ‘Bernice,’ by bill of sale, and the said Schoenwald and Hills immediately thereafter took possession of all of such personal property, including the said gasoline boat, ‘Bernice’ ”; [32]

for the reason that said Finding of Fact is sustained by the uncontradicted evidence in the case.

XII.

The Court erred in not making, signing and filing

Finding of Fact No. 4, offered by the plaintiff and reading as follows:

“That at or about the time of the execution of the deed and bill of sale aforesaid, by the said Pacific Coast & Norway Packing Company conveying all of its property to said Schoenwald and Hills, as aforesaid, Mr. Robertson of the firm of Gunnison & Robertson, who were the attorneys for, and representing the claim of, D. N. McDonald, one of the defendants herein, the said Robertson having charge of the matter, was notified that the Pacific Coast & Norway Packing Company were about to execute such deed and bill of sale, and was asked to forward the claim of said McDonald which consisted of two promissory notes then in the possession of said Robertson, to the receivers for collection, and the said Robertson did, at or about said time of the execution of said deed and bill of sale, take down the address of said receivers for the purpose of submitting said claim of D. N. McDonald to said receivers. That at said time neither the said Robertson nor the firm of Gunnison & Robertson, nor the said D. N. McDonald, the defendant, made any objection to or in *any showed* any disapproval to the execution of such deed and bill of sale conveying all the property to said Schoenwald and Hills for the benefit of the creditors as aforesaid. That the first intimation the plaintiffs had of any dissatisfaction on the part of said D. N. McDonald to the said conveyance by said Pacific Coast & Nor-

way Packing Company to the said Schoenwald and Hills of all of its property, including [33] the gasoline boat 'Bernice,' was several months thereafter when the said D. N. McDonald attached said gasoline boat, 'Bernice.' That said Gunnison & Robertson at all times herein mentioned knew of the appointment of said Schoenwald and Hills as receivers aforesaid'';

for the reason that said Finding is material and is fully sustained by all the evidence in the case and there is no evidence which contradicts the facts set forth in said Finding.

XIII.

The Court erred in not making, signing and filing Finding of Fact No. 6 offered by the plaintiff and reading as follows:

"That every trustee or director and all the stockholders of the Pacific Coast & Norway Packing Company desired, approved and ratified giving the said conveyance to said Schoenwald and Hills as trustees aforesaid, conveying the title to the Alaska assets, and approved the execution of the instruments transferring such assets to said E. Schoenwald and S. T. Hills as trustees; that this approval was not by a formal meeting of the stockholders but was obtained by Mr. Schoenwald, one of the receivers, communicating with the great majority of the stockholders and personally conferring with the rest of them; that the consent and approval by

all of the directors, as well as all of the stockholders, to the execution of the instruments transferring the legal title of the Alaska assets to the receivers was obtained in the manner aforesaid”;

for the reason that said Finding is established by all of the evidence in the case such evidence establishing the acquiescence and consent of the Pacific Coast & Norway Packing Company to the execution of the bill of sale conveying said gasoline boat, “Bernice.”
[34]

XIV.

The Court erred in not making, signing and filing Finding of Fact No. 7 offered by the plaintiff and reading as follows:

“That on, to wit, the 26th day of October, A. D. 1914, the Superior Court of King County, State of Washington, in the case of Roy W. Nevin, plaintiff, vs. Pacific Coast & Norway Packing Company, a corporation, defendant, cause No. 103,639, made and entered an order authorizing the Pacific Coast & Norway Packing Company to convey its Alaska assets to E. Schoenwald and S. T. Hills, and with the consent of said Pacific Coast & Norway Packing Company, which said corporation was present and represented in court at the time of making said order”;

for the reason that said Finding is sustained by all of the evidence in said case and establishes the fact that the proceedings in connection with the execution of the bill of sale were voluntary.

XV.

The Court erred in not making, signing and filing Finding of Fact No. 8, offered by the plaintiffs and reading as follows:

“That the transfer of the assets by said Pacific Coast & Norway Packing Company to E. Schoenwald and S. T. Hills was not made under and by virtue of any Washington statute, or any statute, or by compulsion of law, but the instruments were prepared and executed voluntarily by said company with a view of passing legal title to the said trustees in accordance with the principles of common law, and for the benefit of all [35] the creditors of said corporation alike”;

for the reason that said Finding is sustained by all of the evidence in the case and there is no evidence contradicting the facts contained in said Finding.

XVI.

The Court erred in not making, signing and filing Conclusions of Law Nos. 1, 2, 3, 4 and 5 offered and tendered by the plaintiffs, based upon the Findings of Fact tendered and offered by said plaintiffs.

XVII.

The Court erred in making Finding of Fact No. 7, and especially all that portion of said Finding wherein it is stated that the deed of conveyance from the Pacific Coast & Norway Packing Company of its property to the receivers mentioned therein was made under and by virtue of the order made by the

Superior Court of King County, Washington; for the reason that said Finding is not supported by any evidence in the case whatsoever, but, on the contrary, the evidence shows that the transfer was voluntarily made by said corporation for the benefit of all its creditors and not in pursuance of any order of the court or any law governing receiverships in the State of Washington but that the Court was simply asked to ratify the free and voluntarily act and deed of said corporation in the making of said conveyance; and said Finding is against law.

XVIII.

The Court erred in making Finding of Fact No. 8 for the reason that said Finding of Fact is not supported by any evidence in said cause, and is contrary to the evidence, and particularly there is no evidence to support the following portion of said finding, viz.:

“In any capacity or at all, nor at all ratified
[36] nor acquiesced in any such assignment, or
in said receivership proceedings ”

That on the contrary, the undisputed evidence shows that the said corporation did ratify and acquiesce in the assignment made under the deed to said Schoenwald and Hills, and did participate in the receivership proceedings; and that said Finding is against law.

XIX.

The Court erred in making Finding of Fact No. 13, for the reason that said Finding is against the undisputed testimony and evidence in this cause

and is not supported by any testimony or evidence, and is against law.

XX.

The Court erred in making Conclusion of Law No. 1 based upon said Findings of Fact for the reason there is no testimony or evidence in said cause to support said Conclusion of Law. That in fact said Conclusion is contrary to all the evidence in said cause, and is against law.

XXI.

The Court erred in making Conclusion of Law No. 2 for the reason there is no testimony or evidence in said cause to support said Conclusion of Law. That in fact said Conclusion of Law is contrary to all the evidence in said cause and is against law.

XXII.

The Court erred in entering its Decree and Judgment for and on behalf of the defendants herein, decreeing that the plaintiffs take nothing by their action and that they return and restore and make restitution of the gasoline power seine boat or vessel "Bernice"; because said Decree is not [37] sustained by, but is contrary to, the law and evidence, and is not sustained by the evidence in said cause, and said Judgment and Decree should have been in favor of the plaintiffs herein.

XXIII.

The Court erred in overruling the motion of plaintiffs for a new trial herein.

WINFIELD R. SMITH, and
WINN & BURTON,

Attorneys for Plaintiffs.

Copy of the foregoing Assignment of Errors received this 27th day of May, 1916.

GUNNISON & ROBERTSON,
Attorneys for Defendants. [38]

Filed in the District Court, District of Alaska, First Division, May 27, 1916. J. W. Bell, Clerk. By L. E. Spray, Deputy.

[Endorsed]: No. 1264-A. In the District Court for the Territory of Alaska, Division No. 1. E. Schoenwald, et al., Plaintiffs, vs. Harry A. Bishop, et al., Defendants. Assignment of Errors. [39]

*In the District Court for the District of Alaska,
Division Number One, at Juneau.*

No. 1264-A.

E. SCHOENWALD and S. T. HILLS, and E. SCHOENWALD and S. T. HILLS, as Receivers and Assignees of the PACIFIC COAST & NORWAY PACKING COMPANY, a Corporation,

Plaintiffs,

vs.

HARRY A. BISHOP, as United States Marshal for the First Division of the District of Alaska, and D. N. McDONALD,

Defendants.

Petition for Writ of Error.

To the Honorable ROBERT W. JENNINGS,
Judge of the District Court for the District of Alaska:

Comes now E. Schoenwald and S. T. Hills, and

E. Schoenwald and S. T. Hills as Receivers and Assignees of the Pacific Coast & Norway Packing Company, a corporation, plaintiffs herein, by their attorneys, Winn & Burton, and complaining that in the record and proceedings had in said above-entitled cause, and also in the rendition of the Judgment in the said above-entitled cause in the District Court for the District of Alaska, Division No. 1, against the said above-named plaintiffs on the 8th day of February, 1916, wherein said Court ordered and adjudged that the plaintiffs take nothing by its action and that they restore, and make restitution of the gasoline power seine boat or vessel, "Bernice," manifest error hath happened to the great damage of said plaintiffs, as will more fully appear from [40] the Assignments of Error filed herewith.

WHEREFORE these plaintiffs pray for the allowance of a Writ of Error for the corrections of the errors complained of, and that a transcript of the record and proceedings, with all things concerning the same, duly authenticated, and such other orders and process as may cause the said errors to be corrected, be sent to the United States Circuit Court of Appeals for the Ninth Circuit.

Dated this 27th day of May, A. D. 1916.

WINFIELD R. SMITH,

WINN & BURTON,

Attorneys for Plaintiffs.

Copy of the foregoing Petition for Writ of Error

and allowance of same received this 27th day of May, 1916.

GUNNISON & ROBERTSON,
Attorneys for Defendant.

Filed in the District Court, District of Alaska, First Division, May 27, 1916. J. W. Bell, Clerk. By L. E. Spray, Deputy.

[Endorsed]: No. 1264—A. In the District Court for the Territory of Alaska, Division No. 1. E. Schoenwald and S. T. Hills and E. Schoenwald and S. T. Hills as Receivers and Assignees of Pacific Coast & Norway Packing Company, a Corporation, Plaintiffs, vs. Harry A. Bishop, as United States Marshal for the First Division of the District of Alaska, and D. N. McDonald, Defendants. Petition for Writ of Error and Allowance of Same. Winn & Burton, Attorneys for Plaintiffs. Juneau, Alaska. [41]

*In the District Court for the District of Alaska,
Division No. 1, at Juneau.*

No. 1264-A.

E. SCHOENWALD and S. T. HILLS, and E.
SCHOENWALD and S. T. HILLS as Re-
ceivers and Assignees of the PACIFIC
COAST & NORWAY PACKING COM-
PANY, a Corporation,

Plaintiffs,

vs.

HARRY A. BISHOP, as United States Marshal
for the First Division of the District of
Alaska, and D. N. McDONALD,

Defendants.

Bond on Writ of Error.

KNOW ALL MEN BY THESE PRESENTS that
we, E. Schoenwald and S. T. Hills, individually and as
assignees and receivers, the above-named plaintiffs,
as principals, and American Surety Company of
New York, a corporation organized under the laws
of the State of New York and authorized to do
business in Alaska and to sign bonds as surety
therein, as surety, are held and firmly bound unto
the above-named defendants, in the full sum of
two Hundred and Fifty (\$250) Dollars, lawful
money of the United States of America to be paid
to the said defendants, their successors, heirs,
executors, administrators or assigns, for which pay-
ment well and truly to be made we bind ourselves,
and each of us, and severally, and our and each of

our heirs, executors, administrators, successors and assigns firmly by these presents.

Sealed with our seal and dated this 14th day of March, A. D. 1916.

The condition of this obligation is such,

THAT, WHEREAS, the above-named E. Schoenwald and S. T. Hills, individually and as assignees and receivers, plaintiffs, are suing [42] out a Writ of Error to the United States Circuit Court of Appeals for the Ninth Circuit, to reverse the Decree and Judgment rendered in the above-entitled suit on the 8th day of February, A. D., 1916, in the District Court for the District of Alaska, Division Number One, at Juneau,

NOW THEREFORE, the condition of the above obligation is such that if the above-named E. Schoenwald and S. T. Hills, individually and as assignees and Receivers, plaintiffs, shall prosecute said Writ of Error to effect, and answer all damages and costs if they fail to make good their plea then this obligation shall be void; otherwise the same shall remain in full force and virtue.

E. SCHOENWALD,

Individually as Receiver and Assignee.

S. T. HILLS,

Individually as Receiver and Assignee.

AMERICAN SURETY COMPANY OF
NEW YORK,

By B. S. H. MELROSE,

Resident Vice-President.

Attest: E. G. GHOLSON,

Resident Assistant Secy.

(Surety Company Seal)

The foregoing Bond is approved by me as to form and amount, sufficiency and surety as a cost bond only.

Dated this 27th day of May, 1916.

ROBERT W. JENNINGS,

Judge.

Filed in the District Court, District of Alaska, First Division. May 27, 1916. J. W. Bell, Clerk. By L. E. Spray, Deputy.

[Endorsed]: No. 1264-A. In the District Court for the Territory of Alaska, Division No. 1. E. Schoenwald and S. T. Hills and E. Schoenwald and S. T. Hills as Receivers, etc., Plaintiffs vs. Harry A. Bishop, as United States Marshal for the 1st Div. Dist. of Alaska and D. N. McDonald, Defendants. Bond on Writ of Error. Winn & Burton, Attorneys for Plaintiffs, Juneau, Alaska. [43]

*In the District Court for the District of Alaska,
Division No. 1, at Juneau.*

No. 1264-A.

E. SCHOENWALD and S. T. HILLS, and E. SCHOENWALD and S. T. HILLS, as Receivers and Assignees of the PACIFIC COAST & NORWAY PACKING COMPANY, a Corporation,

Plaintiffs,

vs.

HARRY A. BISHOP, as United States Marshal for the First Division of the District of Alaska, and D. N. McDONALD,

Defendants.

Writ of Error.

United States of America,—ss.

The President of the United States of America, to
the Honorable ROBERT W. JENNINGS,
Judge of the District Court for the District of
Alaska, Division Number One, GREETING:

Because in the record and proceedings as also in
the rendition of the Judgment of a plea in the said
District Court, Division No. 1 thereof, before you,
between E. Schoenwald and S. T. Hills, and E.
Schoenwald and S. T. Hills as Receivers and As-
signees of the Pacific Coast & Norway Packing
Company, a corporation, plaintiffs, and Harry A.
Bishop, as United States Marshal for the First
Division of the District of Alaska, and D. N. Mc-
Donald, defendants, a manifest error hath happened
to the great damage of the said plaintiffs as set forth
and appears by the Petition herein as well as shown
by the Assignments of Error,— [44]

We being willing that error, if any hath hap-
pened, should be duly corrected, and full and speedy
justice done to the parties aforesaid in that be-
half, do command you, if judgment be therein
given, that then under your seal, distinctly and
openly, you send the record and proceedings afore-
said, together with all things concerning the same,
to the Justices of the United States Circuit Court
of Appeals for the Ninth Circuit, in the city of
San Francisco, in the State of California, together
with this Writ, so as to have the same at the said
place and said court on or before thirty days from

the date hereof, that the record and proceedings aforesaid, being inspected, the said Circuit Court of Appeals may cause further to be done therein to correct those errors, which of right and according to the laws and customs of the United States, ought to be done.

WITNESS the Honorable EDWARD D. WHITE, Chief Justice of the Supreme Court of the United States, and the seal of the District Court for Alaska this 27th day of May, A. D. 1916.

[Seal] J. W. BELL,
Clerk of the District Court for the District of
Alaska, Division Number One.

By John Reed,
Deputy.

Said Writ is by me allowed this 27th day of May,
A. D. 1916.

ROBERT W. JENNINGS,
Judge of the District Court for the District of
Alaska, Division Number One.

Due service of the within Writ of Error acknowledged this 27th day of May A. D. 1916.

GUNNISON & ROBERTSON,
Attorneys for Defendants. [45]

Filed in the District Court, District of Alaska,
First Division, May 27, 1916. J. W. Bell, Clerk.
By L. E. Spray, Deputy. [46]

[Endorsed]: No. 1264-A. In the District Court
for the Territory of Alaska, Division No. 1. E.
Schoenwald and S. T. Hills and E. Schoenwald and
S. T. Hills as Receivers and Assignees of Pacific
Coast & Norway Packing Company, a Corporation,

Plaintiffs, vs. Harry A. Bishop, as United States Marshal for the First Division of the District of Alaska, and D. N. McDonald, Defendants. Writ of Error.

*In the District Court for the District of Alaska,
Division Number One, at Juneau.*

No. 1264-A.

E. SCHOENWALD and S. T. HILLS, and E.
SCHOENWALD and S. T. HILLS, as Re-
ceivers and Assignees of the PACIFIC
COAST & NORWAY PACKING COM-
PANY, a Corporation,

Plaintiffs,

vs.

HARRY A. BISHOP, as United States Marshal
for the First Division of the District of
Alaska, and D. N. McDONALD,
Defendants.

Citation (on Writ of Error).

United States of America.

The President of the United States to Harry A.
Bishop, as United States Marshal for the Dis-
trict of Alaska, Division Number One, and D.
N. McDonald, and to Messrs. Gunnison and
Robertson, GREETING:

You are hereby cited and admonished to be and
appear in the United States Circuit Court of Ap-
peals for the Ninth Circuit, to be holden in the city
of San Francisco in the State of California, within
thirty days from the date of the service upon you

and the date of this Citation, pursuant to a Writ of Error filed in the clerk's office of the District Court for the District of Alaska, Division Number One, in a case wherein E. Schoenwald and S. T. Hills and E. Schoenwald and S. T. Hills as Receivers and Assignees of the Pacific Coast & Norway Packing Company, a corporation, are plaintiffs and plaintiffs in error, and you, the said Harry A. Bishop as United States Marshal for the First Division [47] of the District of Alaska, and D. N. McDonald, are defendants and defendants in error, to show cause, if any there be, why the judgment in the said Writ of Error mentioned should not be corrected, and speedy justice done to the parties in that behalf.

WITNESS the Honorable EDWARD D. WHITE, Chief Justice of the Supreme Court of the United States of America, this 27th day of May, A. D. 1916.

ROBERT W. JENNINGS,
Judge.

[Seal]

Attest: J. W. BELL,
Clerk.

By John Reed,
Deputy.

Due and personal service of the foregoing Citation is hereby admitted on this 27th day of May, A. D. 1916.

GUNNISON & ROBERTSON,
Attorneys for Defendants. [48]

Filed in the District Court, District of Alaska, First Division. May 27, 1916. J. W. Bell, Clerk. By L. E. Spray, Deputy. [49]

[Endorsed]: No. 1264-A. In the District Court for the Territory of Alaska, Division No. 1. E. Schoenwald and S. T. Hills and E. Schoenwald and S. T. Hills as Receivers and Assignees of Pacific Coast & Norway Packing Company, a Corporation, Plaintiffs, vs. Harry A. Bishop, as United States Marshal for the First Division of the District of Alaska, and D. N. McDonald, Defendants. Citation (on Writ of Error.)

*In the District Court for the District of Alaska,
Division No. One, At Juneau.*

No. 1264-A.

E. SCHOENWALD and S. T. HILLS, and E.
SCHOENWALD and S. T. HILLS, as Re-
ceivers and Assignees of the PACIFIC
COAST & NORWAY PACKING COM-
PANY, a Corporation,

Plaintiffs,

vs.

H. A. BISHOP, as United States Marshal for the
District of Alaska, Division No. One, and D.
N. McDONALD,

Defendants.

Bill of Exceptions.

Filed in the District Court, District of Alaska,
First Division. May 2, 1916. J. W. Bell, Clerk.
By ———, Deputy. [50]

*In the District Court for the District of Alaska,
Division No. One, at Juneau.*

No. 1264-A.

E. SCHOENWALD and S. T. HILLS, and E.
SCHOENWALD and S. T. HILLS, as Re-
ceivers and Assignees of the PACIFIC
COAST & NORWAY PACKING COM-
PANY, a Corporation,

Plaintiffs,

vs.

H. A. BISHOP, as United States Marshal for the
District of Alaska, Division No. One, and D.
N. McDONALD,

Defendants.

BE IT REMEMBERED, that this cause came on
regularly for trial on the 20th day of December, 1915,
before the Honorable Robert W. Jennings, Judge of
the District Court for the District of Alaska, Divi-
sion No. One, holden at Juneau; that the plaintiffs
appeared by their counsel, Messrs. Winn & Burton;
and defendants appeared by their counsel, Messrs.
Gunnison & Robertson;

Whereupon the following proceedings were had;
[51]

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[52]

Judge WINN.—We first offer in evidence, may it please the Court, the following documents: The complaint of Roy W. Nevin, filed in the Superior Court

of King County, Washington, in cause against the Pacific Coast & Norway Packing Company, being cause No. 103,639 of that court, and which was offered in evidence in cause No. 1171-A of this court, and I will ask the privilege, of course, of obtaining a certified copy of that pleading, as this is a part of the files of 1171-A, in which application was made to this Court, as your Honor will remember, for the appointment of a receiver.

Mr. ROBERTSON.—If the Court please, at this time we object to the introduction of any proof regarding either Mr. Schoenwald or Mr. Hills being Receivers of this company, on the grounds that it is incompetent, irrelevant and immaterial, and that neither Mr. Hills nor Mr. Schoenwald have any rights in this court as Receivers of a court of foreign jurisdiction; and unless that is a certified copy of the paper itself, we object to that particular evidence as not the best evidence.

The COURT.—Now, the first objection is overruled.

Mr. ROBERTSON.—We take an exception. We object to the introduction, now, as incompetent, irrelevant and immaterial.

The COURT.—Objection overruled.

Judge GUNNISON.—We will waive the reading now, and you may read it any time before the close of the case.

(Whereupon said complaint was received in evidence and marked Plaintiffs' Exhibit "A.")

Judge WINN.—Following that up, we offer in evidence a certified copy of the answer in this same

cause, which was filed in the Superior Court of King County by the Pacific Coast and Norway Packing Company to the complaint which we have just offered in evidence.

Mr. ROBERTSON.—We make the same objection, if the Court please.

The COURT.—Same ruling. [53]

(Whereupon said answer was received in evidence and marked Plaintiffs' Exhibit "B.")

Judge WINN.—We also offer in evidence the order made in the same cause by the Superior Court of King County, appointing Mr. Schoenwald Receiver, which is dated September 16, 1914.

Mr. ROBERTSON.—Same objection, if the Court please.

The COURT.—Same ruling.

(Whereupon said order was received in evidence and marked Plaintiffs' Exhibit "C.")

Judge WINN.—We next offer in evidence a certified copy of Mr. Schoenwald's bond, filed in the Superior Court of King County, State of Washington, which is a receiver's bond.

Mr. ROBERTSON.—Same objection.

The COURT.—Same ruling.

(Whereupon said bond was received in evidence, and marked Plaintiffs' Exhibit "D.")

Judge WINN.—We offer in evidence E. Schoenwald's oath of office, it being a certified copy of the original oath of office filed in the Superior Court of King County.

Mr. ROBERTSON.—Same objection.

The COURT.—Same ruling.

(Whereupon said oath of office was received in evidence, and marked Plaintiffs' Exhibit "E.")

Judge WINN.—We now offer in evidence a certified copy of an order made by the Superior Court of King County, appointing S. T. Hills a coreceiver, in the same cause.

Mr. ROBERTSON.—Same objection.

The COURT.—Same ruling.

(Whereupon said order was received in evidence, and marked Plaintiffs' Exhibit "F.")

Judge WINN.—The next is a certified copy of S. T. Hills' receiver's bond; the original order, of course, was made by the Superior [54] Court of King County, State of Washington, in this same cause.

Mr. ROBERTSON.—Same objection.

The COURT.—Same ruling.

(Whereupon said receiver's bond was received in evidence and marked Plaintiffs' Exhibit "G.")

Judge WINN.—Also a certified copy of the original oath of office of Mr. Hills as receiver, which was made by the same court in the same cause.

Mr. ROBERTSON.—Same objection.

The COURT.—Same ruling.

(Whereupon said oath of office was received in evidence, and marked Plaintiffs' Exhibit "H.")

Judge WINN.—We also offer in evidence the certificate of the Clerk of the Court of King County, State of Washington, being in the same court in which this action is pending, certifying that these several exhibits or papers which I just offered in evidence are full, true and correct copies of the origi-

nals, and which will show the certificate of Boyd J. Tallman certifying that W. K. Sickels is the clerk of the court, and the certificate of Sickels certifying that Judge Tallman is a Judge of the court; all these papers are enumerated in the certificate I just offered in evidence.

Mr. ROBERTSON.—Same objection.

The COURT.—Same ruling.

(Whereupon said certificate was received in evidence and marked Plaintiffs' Exhibit "I.")

Mr. ROBERTSON.—If it is for the purpose of proving jurisdiction of the court, I object to it—it is not the best evidence.

The COURT.—Objection overruled.

Judge WINN.—I desire now to read in evidence, if the Court please, the deposition of Winfield R. Smith, which was taken by stipulation, made and entered into by and between the attorneys in this case.
[55]

Mr. ROBERTSON.—We have the same general objection to the general offer of the testimony of Mr. Smith. We object to any testimony so far as the receivership is concerned, on the ground that it is incompetent, irrelevant and immaterial. Of course we will object to the individual questions as they come up.

The COURT.—The general objection is overruled.

(Whereupon the deposition of Winfield R. Smith was begun, but because of objections by counsel for the defendant, to questions and answers, the reading of said deposition was deferred until later.) (See page 26.)

Judge WINN.—We will now offer to read the deposition of L. C. Kells.

(Whereupon said deposition was read as follows:)

Deposition of Lucas C. Kells.

Int. 1. Please state your name, residence and occupation.

A. My name is Lucas C. Kells. My residence is 1948—8th Avenue, West, Seattle, and I am an attorney at law.

Mr. ROBERTSON.—If the Court please, we make the same objection to any evidence of Mr. Kells regarding the receivership, as incompetent, irrelevant and immaterial.

The COURT.—That general objection is overruled.

Int. 2. If you have stated in your answer to the preceding, that you are an attorney at law, please state with whom, if any one, you are engaged in the practice of law, and how long you have been so engaged.

Mr. ROBERTSON.—We think that is immaterial, but it is preliminary.

The COURT.—It is preliminary.

A. I am employed in the office of Winfield R. Smith, and have been since March, 1913.

Int. 3. If you have stated that you are engaged in the practice of the law with Mr. Winfield R. Smith, state whether through this connection you have, acting for Mr. Smith, performed legal services for the above-named E. Schoenwald and S. T. Hills as Receivers of the Pacific Coast & Norway Packing [56] Company.

(Deposition of Lucas C. Kells.)

Mr. ROBERTSON.—We object to that, if the Court please, as not the best evidence.

The COURT.—Objection overruled.

A. Yes.

Int. 4. Did you, in connection with your employment or engagement by Mr. Smith, perform legal services for the Pacific Coast & Norway Packing Company, prior to the appointment of said Schoenwald and Hills as receivers? And state what, if any, part you took, as attorney, in connection with your relation to Mr. Smith, for said corporation in the suit brought against it for the appointment of receivers, and in which receivers were appointed.

Mr. ROBERTSON.—We object to that upon the same grounds, and further, it asks two questions at once.

The COURT.—Objection overruled.

A. Yes, I drew the answer of the company in that case and had Mr. Steberg verify it.

Int. 5. State whether the said corporation has since employed any other attorney in the receivership matters.

Mr. ROBERTSON.—We object to that as immaterial.

The COURT.—Objection overruled.

A. No, not to my knowledge.

Int. 6. Please state whether or not you are familiar with and have personal knowledge of the reasons why receivers were appointed for said Pacific Coast & Norway Packing Company.

Mr. ROBERTSON.—We object to that as incom-

(Deposition of Lucas C. Kells.)

petent, irrelevant and immaterial—that is the same question that they asked Mr. Smith—not the best evidence, and it is immaterial if he knew why they were appointed—also a conclusion of law.

The COURT.—Objection overruled.

A. Yes. [57]

Int. 7. If so, state such reasons in full.

Mr. ROBERTSON.—We object to that as incompetent, irrelevant and immaterial, and calls for a conclusion of law, and not the best evidence. The best evidence is the record of the court. Why the court appointed the receiver—that is the gist of it. It is not how it came that they were appointed—how they were appointed. It seems to me there is a lot of distinction there, if the Court please.

The COURT.—Objection overruled.

A. Owing to a number of unexpected business reverses, the company was unable to pay its current obligations. Its bank account and much of its salmon pack were tied up by garnishments, and other suits were being threatened. In order to secure equality among the creditors of the company and to preserve the assets, it was deemed wise by the company's officers and directors, and by the principal creditors and stockholders, to have receivers appointed.

The COURT.—The defendant is allowed an exception.

Int. 8. Were any other receivers appointed for said corporation?

Mr. ROBERTSON.—We object to that as immaterial.

(Deposition of Lucas C. Kells.)

The COURT.—Objection overruled.

A. No.

Int. 9. State, if you know, what disposition was made of the property, real and personal, of the Pacific Coast & Norway Packing Company upon the appointment and qualification of Mr. Schoenwald as receiver, and state expressly as to the property and assets located in Alaska, including the gasoline boat "Bernice." What further, if anything, was done with such property and assets upon the appointment and qualification of Mr. Hills as coreceiver?

Mr. ROBERTSON.—We object to that as incompetent, irrelevant and immaterial, multifarious, and we do not think it is the [58] best evidence, calls for a conclusion, is hearsay, and an assumption.

The COURT.—Objection overruled.

A. Mr. Schoenwald at once took possession of all the property wherever situated, including the "Bernice." Mr. Hills, when appointed, simply joined in Mr. Schoenwald's possession and control.

Judge GUNNISON.—We move against the answer, on the same ground that it is a statement or conclusion—not what actually took place—hearsay, and an assumption.

The COURT.—Overruled.

Int. 10. State whether the said receivers have been conducting the business of the said Pacific Coast & Norway Packing Company in Alaska, and if so, when they, or Mr. Schoenwald, began to do so.

Mr. ROBERTSON.—We object to that as incompetent, irrelevant and immaterial; calls for a con-

(Deposition of Lucas C. Kells.)

clusion of the witness, and is hearsay.

The COURT.—Objection overruled.

A. Yes, from the time of their respective appointments.

Int. 11. State whether the real and personal property belonging to said corporation in the territory of Alaska, including the said gasoline boat "Bernice," was transferred by written instruments delivered to the receivers; and if so, when.

Mr. ROBERTSON.—We object to that as incompetent, irrelevant and immaterial, calls for a conclusion of law, and not the best evidence.

The COURT.—Objection overruled.

A. Yes, October 26, 1914.

Int. 12. You will please examine exhibits attached to the deposition of Winfield R. Smith and state, if you know, what was the occasion for the execution of these instruments, and whether they were executed and delivered voluntarily by the [59] Pacific Coast & Norway Packing Company.

Mr. ROBERTSON.—We object to that as not the best evidence, calls for a conclusion of law, is incompetent, irrelevant and immaterial.

The COURT.—Objection overruled.

A. The instruments were executed in order to give the receivers legal title to the assets in Alaska and thus avoid the necessity of ancillary receivers being appointed there. The action was entirely voluntary on the company's part.

Int. 13. What, if anything, did you have to do with the execution and delivery of said instruments,

(Deposition of Lucas C. Kells.)

and state fully the circumstances and conditions surrounding and leading up to their execution.

Mr. ROBERTSON.—We make the same objection.

The COURT.—Objection overruled.

Mr. ROBERTSON.—We move to strike the balance of the answer after the first sentence, on the ground that the same is incompetent, irrelevant and immaterial, calls for a conclusion of the witness, is hearsay and not the best evidence; and it is a self-serving declaration.

The COURT.—All of the answer after the word “centered” in the sixth line of the answer will be stricken.

A. I prepared the instruments and they were executed and delivered in my presence. The officers, principal stockholders and creditors concurred in wishing to have the control of all the company’s affairs in the hands of the company’s receivers at Seattle, where its principal office had always been, and where its business interests were centered.

Int. 14. State whether or not, if you know, the trustees and stockholders of the Pacific Coast & Norway Packing Company authorized or acquiesced in the execution and delivery of said instruments.

[60]

Mr. ROBERTSON.—We object to that as incompetent, irrelevant and immaterial, calls for a conclusion of the witness, is not the best evidence. The best evidence would be the minutes or resolutions of the company.

(Deposition of Lucas C. Kells.)

The COURT.—Objection overruled.

A. Yes, it was approved and acquiesced in by both.

Judge GUNNISON.—We move to strike all after the word “Yes” in that answer, as not responsive to the question, and not the best evidence, and hearsay.

The COURT.—Motion denied.

Int. 15. State fully whether or not, if you know, the Superior Court of King County, being the court of the receivership, compelled the execution and delivery of the said instruments, or whether the same were executed voluntarily by the said Pacific Coast & Norway Packing Company without compulsion.

Mr. ROBERTSON.—We object to that as incompetent, irrelevant and immaterial, not the best evidence, and calls for a conclusion of law.

The COURT.—The objection is overruled.

Judge GUNNISON.—We move to strike answer 15, on the ground that the answer is not responsive to the question, is hearsay, not the best evidence, and states a conclusion of the witness as to what and why the Court acted or did not act.

The COURT.—Motion denied; and to all the objections you make that the Court does not allow, you are allowed an exception, and the record may so show.

A. The Court did not compel the transfer. It was fully planned, agreed upon and the instruments in process of preparation before any court order was obtained or the court acquainted with the plan. The purpose of the order was to have the approval of the Court.

Int. 16. Attached to the deposition of Winfield

(Deposition of Lucas C. Kells.)

R. Smith is a certified copy of an order of the Superior Court of King County [61] authorizing transfer of property to the receivers. Please examine said order and state if you know why and under what circumstances the said order was entered and why the said written transfers were ordered executed and delivered.

Mr. ROBERTSON.—We object to that.

The COURT.—Objection overruled.

A. This I have already answered.

Int. 17. State whether there has been any active co-operation throughout the receivership between the receivers and creditors of Pacific Coast & Norway Packing Company; and if so, state by and through whom the said creditors actively co-operated with said receivers.

Mr. ROBERTSON.—We object to that as incompetent, irrelevant and immaterial, and not the best evidence.

The COURT.—Objection overruled.

A. The principal creditors were consulted from the beginning. On September 22, 1914, a creditors' meeting was held and a committee chosen to represent the general creditors and to co-operate with the receivers.

Int. 18. If you have mentioned a creditors' committee, state when such committee was selected, how and by whom, of whom it consists, and why these persons were selected, if you know.

Mr. ROBERTSON.—The same objection, if the Court please, to that question.

(Deposition of Lucas C. Kells.)

The COURT.—Objection overruled.

A. As said, a well attended meeting of the creditors was had and a committee chosen by it. The committee consists of Mr. Pattullo, Mr. Speckert, Mr. Morganstern and Mr. McLean. These men are representatives of the four largest unsecured creditors.

Int. 19. State, if you know, what at that time was and since has been, the attitude of the creditors of Pacific Coast & Norway Packing Company towards the assets in Alaska, and [62] especially towards the immediate delivery of the said assets to the receivers upon their appointment, and the retention of such assets since by the receivers, and towards the written transfers of the said assets hereinabove mentioned and set forth.

Mr. ROBERTSON.—We object to that as incompetent, irrelevant and immaterial, calls for a conclusion of the witness, calls for hearsay, and is not the best evidence.

The COURT.—Objection sustained.

(Answer 19 not read.)

Int. 20. State whether the conveyance of the assets of said Pacific Coast & Norway Packing Company unto said receivers, including the gasoline boat "Bernice," was made under and by virtue of any Washington statute or under compulsion of law, or whether the deeds of conveyance were intended common law deeds. Answer fully.

Mr. ROBERTSON.—We object to that as incompetent, irrelevant and immaterial, calls for a conclu-

(Deposition of Lucas C. Kells.)

sion of the witness as well as for a conclusion of law, is not the best evidence. That is the very gist of the case, for the Court to pass upon.

The COURT.—Objection overruled.

A. The transfer of assets was not made under and by virtue of any Washington statute. The laws of Washington are full and explicit on the matter of conveyances for the benefit of creditors, but none of these provisions were thought of and no attempt was made to comply with them. We wished a transfer which would be recognized in Alaska and elsewhere, and hence paid no regard to purely local statutes. The instruments were prepared and executed voluntarily with a view of passing legal title to the receivers in accordance with the principles of common law.

Int. 21. Do you know, or can you set forth, any other matter or thing which may be a benefit or advantage to the parties at [63] issue in this cause, or either of them, or that may be material to the subject of this, your examination, or the matters in question in the cause? If yes, set forth the same fully and at large in your answer.

Mr. ROBERTSON.—We make the same objection to that, and also that it is too general, and that is too incompetent, irrelevant and immaterial.

The COURT.—There can be no objection to the question.

Judge GUNNISON.—We move to strike the answer as incompetent, irrelevant and immaterial.

(Deposition of Lucas C. Kells.)

The COURT.—The entire answer may be stricken.

(Answer not read.)

Cross-interrogatories.

Cross-int. 1. In what court, and in what state, were E. Schoenwald and S. T. Hills appointed receivers for the Pacific Coast & Norway Packing Company?

A. In the Superior Court of the State of Washington for King County.

Cross-int. 2. Was the gasoline boat "Bernice" in the State of Washington at any time during the period from September 15, 1914, to April 28, 1915?

A. I think not.

Cross-int. 3. Was the gasoline boat "Bernice" at all times within the jurisdiction of the District Court of the First Division of the Territory of Alaska, during the period from September 15, 1914, to April 28, 1915? If your answer is in the negative, state the periods of time, giving dates, that said boat was outside the jurisdiction of said court.

A. I believe it was at or near Petersburg, Alaska, during this time.

Cross-int. 4. Was the gasoline boat "Bernice," during the period from September 15, 1914, to February 8, 1915, licensed under [64] documents issued by the officials of the United States Customs District for Alaska? A. I do not know.

Cross-int. 5. Was any bill of sale or other document conveying the gasoline boat "Bernice" from the Pacific Coast & Norway Packing Company to

(Deposition of Lucas C. Kells.)

E. Schoenwald and S. T. Hills, as receivers, or to either of them as receivers, filed for record or recorded with the United States Custom officials for the Customs District of Alaska, at any time prior to February 10, 1915? If your answer is in the affirmative, state the date that said bill of sale or other document was recorded with said officials.

A. No, none has ever been recorded.

Cross-int. 6. Have E. Schoenwald and S. T. Hills, or either of them, ever been appointed receivers of the Pacific Coast & Norway Packing Company by any court of the District or Territory of Alaska? A. No, I think not.

Cross-int. 7. Was the conveyance or transfer of the gasoline boat "Bernice" to Schoenwald and Hills, or to either of them, made prior to the appointment of those gentlemen as receivers by the Superior Court of Kings County, State of Washington?

A. No, subsequent to their appointment.

Cross-int. 8. Did Honorable Everett Smith, Judge of the Superior Court of King County, for the State of Washington, on or about October 26, 1914, make an order directing that the Pacific Coast & Norway Packing Company transfer all of its personal assets in Alaska to Schoenwald and Hills, as receivers? A. Yes.

Cross-int. 9. Was the bill of sale or conveyance of the gasoline boat "Bernice" to Schoenwald and Hills as receivers, made in pursuance to the order of the Superior Court of King County, [65] entered by that court on or about October 26, 1914?

(Deposition of Lucas C. Kells.)

A. No, strictly speaking not. As said, the whole arrangement had been made and agreed upon and the instruments were in process of preparation at the time the order was made. The order was for the purpose of approving a plan already decided upon and agreed to.

Cross-int. 10. Was a meeting of the board of directors or trustees of the Pacific Coast & Norway Packing Company held for the purpose of authorizing and acquiescing in the execution and delivery of the instrument conveying the gasoline launch "Bernice" to Schoenwald and Hills as receiver?

A. No.

Cross-int. 11. In what city, state, office or building was said meeting of the board of directors or trustees of said corporation held?

A. Cross-interrogatories 11 to 15, inclusive, assume that such a meeting was held, and the contrary being true, have no application.

(Cross-interrogatories 12, 13, 14 and 15 not read, all referring to No. 10.)

Cross-int. 16. Was a meeting of the stockholders of the Pacific Coast and Norway Packing Company held for the purpose of authorizing and acquiescing in the execution and delivery of the instrument conveying the gasoline launch "Bernice" to Schoenwald and Hills as receivers?

A. No, I think not.

Cross-int. 17. Where was said meeting of the stockholders of said corporation held, giving the city, state, and office or building?

(Deposition of Lucas C. Kells.)

A. Cross-interrogatories 17 to 23, inclusive, assume an affirmative answer to cross-interrogatory 16, and the contrary being the fact, these questions have no application.

(Cross-interrogatories 18, 19, 20, 21, 22 and 23 not read, as they refer to No. 16.) [66]

Cross-int. 24. Did you, as attorney for said Schoenwald and Hills, as receivers, cause to be made and entered the order of the Superior Court of King County, dated on or about October 26, 1914, which order is referred to in cross-interrogatory No. 8? A. Yes, acting for Mr. Smith.

Cross-int. 25. Did you dictate or draw said order of the Superior Court of King County, of October 26, 1914? If you did not, give the name of the person who did. A. Yes.

Cross-int. 26. Has a committee of Alaskan creditors been selected and appointed in Alaska to co-operate with Schoenwald and Hills as receivers?

A. Not to my knowledge.

Cross-int. 27. If you have stated that there has been a committee of Alaskan creditors selected and appointed in Alaska to co-operate with Schoenwald and Hills as receivers, state the names of said Alaskan creditors, who are members of said committee, giving their Alaska address.

(No answer to above interrogatory.)

Cross-int. 28. State the names of the creditors of said Pacific Coast & Norway Packing Company who live in Alaska.

A. Except Mr. McDonald, I do not know their

(Deposition of Lucas C. Kells.)

names.

Cross-int. 29. State the dividend that has been paid to Alaskan creditors by Schoenwald and Hills as receivers, up to and including October 12, 1915.

A. None.

Cross-int. 30. Were Schoenwald and Hills appointed receivers upon a petition of one Roy W. Nevin, in cause No. 103,639, of the Superior Court of King County, State of Washington?

Judge GUNNISON.—We move to strike all except the word “Yes,” as voluntary testimony by the witness, and as not responsive.

The COURT.—It will be stricken.

A. Yes. [67]

Cross-int. 31. Was Roy W. Nevin a creditor of the Pacific Coast & Norway Packing Company at the time of the filing of his petition in Cause No. 103,639 of the Superior Court of King County, State of Washington? A. Yes.

Cross-int. 32. Was a conveyance of the gasoline boat “Bernice” to Schoenwald and Hills as receivers made after Honorable Robert W. Jennings, Judge of the District Court for the First Division of Alaska, had refused to grant the petition of Roy W. Nevin for the appointment of an ancillary receiver of the Pacific Coast & Norway Packing Company in the Territory of Alaska?

A. I do not think Mr. Nevin petitioned in Alaska. The receivers in Washington petitioned there. I understand that the Alaska court heard the petition partially but did not pass upon it. The transfer of

(Deposition of Lucas C. Kells.)

the "Bernice," however, was subsequent to this.

Cross-int. 33. Was Roy W. Nevin a creditor of the Pacific Coast & Norway Packing Company at the time of the filing of his petition in the District Court of Alaska, for the appointment of a receiver for said corporation?

A. He filed no petition in Alaska.

Cross-int. 34. Of what State has E. Schoenwald been a citizen and resident since September 15, 1914? A. Washington.

Cross-int. 35. Of what State has S. T. Hills been a citizen and resident since September 15, 1914?

A. Washington.

Cross-int. 36. Was the Pacific Coast & Norway Packing Company insolvent at the time of the appointment of Schoenwald and Hills as receivers, of such by the Superior Court of King County, State of Washington?

Mr. ROBERTSON.—We move to strike all of the answer to this question [68] except the word "No."

The COURT.—It will be stricken.

A. No.

Cross-int. 37. Was the conveyance to Schoenwald and Hills as receivers, of the gasoline boat "Bernice," as well as the other personal assets in Alaska of the Pacific Coast & Norway Packing Company necessary to the successful conduct of the receivership by said Schoenwald and Hills as receivers?

A. It may not have been absolutely necessary, but after consideration we all agreed that it would

(Deposition of Lucas C. Kells.)

effect considerable economy and efficiency of management.

Cross-int. 38. Are all of your answers to the direct and cross-interrogatories propounded to you in this deposition based upon your personal and actual knowledge? If your answer to this question is in the negative, state which answers are not, indicating by the particular number of each direct and cross-interrogatory to which your answers are not based upon personal and actual knowledge.

A. I was not present at the creditors' meeting and have come very little in contact with the creditors and stockholders. My information as to their attitude has been obtained from discussions of the company's affairs with the receivers, Mr. Smith and the president of the company, with relation to the conduct of its business. Otherwise my answers are from personal knowledge.

Cross-int. 39. Are you an impartial witness in view of the fact that you are one of the attorneys for the plaintiffs in the case in which this deposition is being taken?

A. Yes. I have endeavored to answer with the exact truth in so far as I know it.

Cross-int. 40. Have you dictated or outlined the plan of procedure under which Schoenwald and Hills, as receivers, are acting in endeavoring to obtain control of the assets of the Pacific [69] Coast & Norway Packing Company, which are located in Alaska?

Mr. ROBERTSON.—We ask that all after the

(Deposition of Lucas C. Kells.)

word "No" in the answer be stricken.

The COURT.—It will be stricken.

A. No.

Cross-int. 41. Is it not to your personal interest to have the assets in Alaska of the Pacific Coast & Norway Packing Company administered by the courts of Washington?

A. No, I have no personal interest whatever in the matter.

Judge WINN.—We will now read the deposition of C. O. Steberg.

Mr. ROBERTSON.—We will make the same objection to the testimony of Mr. Steberg as to the receivership as incompetent, irrelevant and immaterial.

The COURT.—The general objection is overruled.

Deposition of C. O. Steberg.

Int. 1. State your name, residence and occupation.

A. C. O. Steberg; Buckley, Washington, near Seattle; banker, with other business interests, including that in Pacific Coast & Norway Packing Company.

Int. 2. Are you a stockholder and director of the Pacific Coast & Norway Packing Company?

Mr. ROBERTSON.—We object to that as incompetent, irrelevant and immaterial.

The COURT.—Overruled.

A. Yes, and president, as well as a creditor.

Mr. ROBERTSON.—We move to strike all that part of his answer except the word "Yes."

The COURT.—It will be stricken.

(Deposition of C. O. Steberg.)

Int. 3. Were you such stockholder and director prior to, and at the time of, the appointment of E. Schoenwald and S. T. Hills as receivers of said company?

Mr. ROBERTSON.—We object to that as incompetent, irrelevant and immaterial.

The COURT.—Overruled. [70]

A. Yes, for years before.

Int. 4. State whether, if you know, the assets of the Pacific Coast & Norway Packing Company, including its assets in Alaska, were at once turned over to said receivers upon their appointment and qualification.

Mr. ROBERTSON.—We object to that as incompetent, irrelevant and immaterial, not the best evidence, calls for a conclusion of the witness, and it seems to me it calls for hearsay.

The COURT.—Objection overruled.

A. They were.

Int. 5. Please state whether or not you are familiar with and have personal knowledge of the reasons why receivers were appointed for said Pacific Coast & Norway Packing Company. A. Yes.

Int. 6. If so, state such reasons in full.

Mr. ROBERTSON.—Now, we object to that as incompetent, irrelevant and immaterial.

The COURT.—Overruled.

Mr. ROBERTSON.—We object to the answer as incompetent, irrelevant and immaterial, not responsive to the question; it is a conclusion of the witness, and is not the best evidence.

(Deposition of C. O. Steberg.)

The COURT.—Objection overruled.

A. Various unlooked for difficulties prevented the company paying its debts as they fell due. It had plenty of assets, but couldn't realize. Some were tied up by garnishment. Particularly there was a story passed around that the company had a lot of poor fish, and this made us trouble. We wanted to protect the creditors and get the company in shape again, and so a friendly suit was started and receivers appointed.

Int. 7. Were any other receivers appointed for said corporation?

Mr. ROBERTSON.—We object to that as incompetent, irrelevant and immaterial, and not the best evidence.

The COURT.—Objection overruled. [71]

A. None except Schoenwald and Hills.

Int. 8. State, if you know, what disposition was made of the assets of the Pacific Coast & Norway Packing Company, and expressly as to the assets of the said company located in Alaska, including the gasoline boat "Bernice."

Mr. ROBERTSON.—We object to that as incompetent, irrelevant and immaterial, not the best evidence, there are two questions in one, and it calls for a conclusion of the witness.

The COURT.—Objection overruled.

Judge GUNNISON.—We move to strike the answer as not responsive, commencing with the words "Then a deed and bill of sale" in the second line of the answer.

(Deposition of C. O. Steberg.)

The COURT.—Motion denied.

A. Turned over at once to Schoenwald as receiver, including the Alaska assets. Then a deed and bill of sale of the Alaska properties were made. The “Bernice” was included.

Int. 9. If you have stated in answer to the last question, that the assets of said company were transferred to E. Schoenwald as receiver, or to Schoenwald and Hills as receivers, state the purpose of such transfer, and whether the same was with the acquiescence and ratification of the board of directors, and stockholders, of said Pacific Coast & Norway Packing Company. Answer fully.

Mr. ROBERTSON.—We object to that, if the Court please, as incompetent, irrelevant and immaterial, not the best evidence.

The COURT.—Objection overruled.

A. The purpose of the transfer was to make the handling of the properties as simple, cheap and effective as possible for the protection of all the creditors alike. Yes, everybody desired this and approved of transferring the Alaska assets to the receivers. All the directors approved of this, and so far as my knowledge went all the stockholders did. I personally know that a large majority of the stockholders did. [72]

Judge GUNNISON.—I think our objection to that in the first place was it wasn't responsive. I would like to object to the last three sentences of that answer, beginning with the word “Yes,” and going to the end of the answer, as immaterial, irrelevant,

(Deposition of C. O. Steberg.)

and not proving or attempting to prove any action on the part of the corporation; and I would like to have the record show our objection.

The COURT.—Very well, the record will so show, and the objection will be overruled.

Int. 10. Do you know, or can you set forth, any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this, your examination, or the matters in question in the cause? If yes, set forth the same fully and at large in your answer.

A. I don't think of anything more.

Cross-interrogatories.

Cross-int. 1. State what Court appointed E. Schoenwald and S. T. Hills receivers of the Pacific Coast & Norway Packing Company.

A. Superior Court at Seattle.

Cross-int. 2. Has any court in the Territory of Alaska ever appointed Schoenwald and Hills, or either of them, receivers for the Pacific Coast & Norway Packing Company? A. I believe not.

Cross-int. 3. Was the gasoline boat "Bernice" at any time in the State of Washington during the period between September 15, 1914, and February 8, 1915? A. I think not.

Cross-int. 4. Was Roy W. Nevin a creditor of the Pacific Coast & Norway Packing Company at the time of filing his petition in the Superior Court of King County, State of Washington, [73] in cause No. 103,639, for the appointment of receivers of said

(Deposition of C. O. Steberg.)

corporation? A. I so understood.

Cross-Int. 5. How much of a dividend has been paid to the creditors of the Pacific Coast & Norway Packing Company by Schoenwald and Hills as receivers of said corporation, since their appointment?

A. None.

Cross-int. 6. Was a meeting of the Board of Directors or Trustees of the Pacific Coast & Norway Packing Company held for the purpose of authorizing and acquiescing in the execution and delivery of the instrument conveying the gasoline launch "Bernice" to Schoenwald and Hills as receivers?

A. No, there has been no meeting of the board since before the receivership.

Cross-int. 7. In what city, state, office or building was said meeting of the board of directors or trustees of said corporation held?

(No answer and cross-interrogatories Nos. 8, 9, 10, not read, as they refer to No. 6.)

Cross-int. 11. How many trustees or directors constituted the board of directors or trustees of said corporation on the date of their said meeting to which you referred in your answer to cross-interrogatory No. 6?

A. Seven was the entire board. I think there was one vacancy at that time.

Cross-int. 12. Was a meeting of the stockholders of the Pacific Coast & Norway Packing Company held for the purpose of authorizing and acquiescing in the execution and delivery of the instrument conveying the gasoline launch "Bernice" to Schoen-

(Deposition of C. O. Steberg.)

wald and Hills as receivers? A. No.

(Cross-interrogatories Nos. 13, 14, 15, 16, 17, 18, and 19, [74] not read, as they refer to cross-interrogatory No. 12.)

Cross-int. 20. Please state the total amount of capital stock outstanding on the date of said meeting.

A. Somewhere between \$300,000 and \$400,000. I don't remember the exact amount.

Cross-int. 21. Of what state have E. Schoenwald and S. T. Hills been residents since September 15, 1914, giving the state of residence of each?

A. Both residents of Washington.

Cross-int. 22. Was said conveyance or bill of sale to E. Schoenwald and S. T. Hills, as receivers, of the gasoline boat "Bernice" made pursuant to an order dated October 26, 1914, made by the Superior Court of King County, of the State of Washington?

A. The order and transfer were made at the same time. We asked the Court to approve the receivers, taking over the Alaska properties, because this was in all ways a good thing and to the advantage of all interested.

Cross-int. 23. Was said conveyance or bill of sale of the gasoline boat "Bernice" to Schoenwald and Hills as receivers necessary to the successful conduct of the receivership by those gentlemen?

A. Probably not necessary but very helpful and important.

Cross-int. 24. Has a committee of Alaskan creditors been selected and appointed in Alaska to co-

(Deposition of C. O. Steberg.)

operate with Schoenwald and Hills as receivers?

Mr. ROBERTSON.—We move to strike, as not responsive, all after the word “No,” in the answer.

The COURT.—It will be stricken.

A. No.

Cross-int. 25. If you have stated that there has been a committee of Alaskan creditors selected and appointed in Alaska to co-operate with Schoenwald and Hills as receivers, state the [75] names of said Alaskan creditors, who are members of said committee, giving their Alaskan address.

Mr. ROBERTSON.—We move to strike all of the 25th answer, except the words “I have answered this.”

The COURT.—Motion denied.

A. I have answered this. There is no Alaska creditors on the committee the creditors in Alaska are few and small. McDonald is the only creditor of any size, except the bank of Petersburg. Officers of the bank were consulted and approved everything that was done.

Cross-int. 26. State the names of the creditors of said Pacific Coast & Norway Packing Company who live in Alaska.

Mr. ROBERTSON.—We move to strike the answer to this question as not responsive.

The COURT.—All may be stricken after the word “them.”

A. I haven't any list of them.

Cross-int. 27. State the dividend that has been paid to Alaskan creditors by Schoenwald and Hills as

(Deposition of C. O. Steberg.)

receivers, up to and including October 12, 1915.

A. No dividend has been paid creditors.

Cross-int. 28. Were Schoenwald and Hills appointed receivers upon a petition of one Roy W. Nevin, in cause No. 103,639 of the Superior Court of King County, state of Washington?

Mr. ROBERTSON.—I move to strike the answer to this question, as not responsive.

The COURT.—The entire answer may be stricken.
(Answer not read.)

Cross-int. 29. Was a conveyance of the gasoline boat "Bernice" to Schoenwald and Hills, as receivers made after Honorable Robert W. Jennings, Judge of the District Court for the First Division of Alaska, had refused to grant the petition of Roy W. Nevin, for the appointment of an ancillary receiver [76] of the Pacific Coast & Norway Packing Company in the Territory of Alaska?

A. So far as I know, there wasn't any such petition nor refusal.

Cross-int. 30. Was Roy W. Nevin a creditor of the Pacific Coast & Norway Packing Company at the time of the filing of his petition in the District Court of Alaska, for the appointment of a receiver for said corporation?

A. I don't think he filed any petition in Alaska. He continued to be a creditor.

Cross-int. 31. Was the Pacific Coast & Norway Packing Company insolvent at the time of the appointment of Schoenwald and Hills as receivers, of

(Deposition of C. O. Steberg.)

such, by the Superior Court of King County, State of Washington?

A. It was not in shape to meet some of its bills, as these fell due, but its assets were regarded as largely in excess of its debts.

Cross-int. 32. Are all of your answers to the direct and cross-interrogatories propounded to you in this deposition based upon your personal and actual knowledge? If your answer to this question is in the negative, state which answers are not, indicating by the particular number of each direct and cross-interrogatory to which your answers are not based upon personal and actual knowledge.

A. Yes, except where otherwise shown in the answers.

(Whereupon court adjourned until 10 o'clock tomorrow morning.)

MORNING SESSION.

December 21, 1915, 10 A. M.

The COURT.—In the matter of the deposition of Mr. Smith, the objections to the questions are all overruled. The objections to the answers are virtually all granted. The parts of the answers not read are stricken; and the plaintiffs are allowed an exception.

(The defendants filed with the clerk of the court objections to questions and answers; the objections to the questions appear in the deposition following; the objections to the answers appear following the answers containing the stricken portions, page 48.

(Deposition of Winfield R. Smith.)

Whereupon said deposition was read as follows:)

[77]

Int. 1. Please state your name, residence and occupation.

A. My name is Winfield R. Smith; I reside at the Sorrento Hotel, Seattle, Washington, and am an attorney.

Int. 2. State whether you are attorney for the above-named E. Schoenwald and S. T. Hills as receivers of the Pacific Coast & Norway Packing Company, and if so, how long you have been such attorney.

Mr. ROBERTSON.—We object to that as multifarious, incompetent, irrelevant and immaterial, and not the best evidence.

A. I have been attorney for the receivers since their appointments.

Int. 3. State whether you were attorney for said Pacific Coast & Norway Packing Company prior to being attorney for the receivers, how long you continued as attorney for such corporation, and what, if any, part you took as such attorney for said corporation in the suit brought against it for the appointment of receivers, and in which such receivers were appointed.

Mr. ROBERTSON.—Same objection.

A. I was not regularly the attorney for the company, but acted for them in some matters. I appeared for them in the receivership suit of Nevin vs. the Company, until the receivers were appointed, then I withdrew.

(Deposition of Winfield R. Smith.)

Int. 4. State whether the said corporation has since employed any other attorney in the receivership matters.

Mr. ROBERTSON.—We object to that as incompetent, irrelevant and immaterial.

A. Not so far as I know.

Int. 5. Please state whether or not you are familiar with and have personal knowledge of the reasons why receivers were appointed for said Pacific Coast & Norway Packing Company.

Mr. ROBERTSON.—We object to that as calling for a conclusion of the witness, is incompetent, irrelevant, immaterial, calls for a conclusion of law, and not the best evidence. [78]

A. I am and have.

Int. 6. If so, state such reasons in full.

Mr. ROBERTSON.—Same objection as to previous question.

A. For a combination of reasons the company found itself unable to pay its debts as they matured in ordinary course of business. A few poor fish, exaggerated reports, large shipments held up, suit of Duff, garnishment, etc. Believed then the company's assets far exceeded liabilities and could work out. Purpose of receivership was to conserve the assets and enable the company to get on its feet and pay debts at the earliest possible time.

Int. 7. Were any other receivers appointed for said corporation?

Mr. ROBERTSON.—That is objected to as immaterial. A. No.

(Deposition of Winfield R. Smith.)

Int. 8. State, if you know, what disposition was made of the property, real and personal, of the Pacific Coast & Norway Packing Company upon the appointment and qualification of Mr. Schoenwald as receiver, and state expressly as to the property and assets located in Alaska, including the gasoline boat "Bernice." What further, if anything, was done with such property and assets upon the appointment and qualification of Mr. Hills as coreceiver?

Mr. ROBERTSON.—Object to that as incompetent, irrelevant and immaterial, multifarious and not the best evidence.

A. All the property was immediately turned over to the receiver.

Int. 9. State whether the said receivers have been conducting the business of the said Pacific Coast & Norway Packing Company in Alaska, and if so, when they, or Mr. Schoenwald, began to do so.

Mr. ROBERTSON.—Same objection as to the foregoing question.

A. Yes, from the moment Schoenwald was appointed and qualified as receiver. Transfer of possession and control was made on telegraphic arrangement by the company. [79]

Int. 10. State whether the real and personal property belonging to said corporation in the territory of Alaska, including the said gasoline boat "Bernice," was transferred by written instruments delivered to the receivers; and if so, when, and attach hereto the said writing or writings, marking them appropriately as exhibits constituting a part of

(Deposition of Winfield R. Smith.)

your answer to this question.

Mr. ROBERTSON.—We object to that as calling for a conclusion of law, not the best evidence, multifarious, incompetent, irrelevant and immaterial, and a conclusion of the witness.

A. Yes; real estate by deed; personal property by bill of sale, expressly including the “Bernice.” The original writings are hereto attached, and marked respectively exhibits “A” and “B.”

Int. 11. State, if you know, what was the occasion for the execution of these instruments, and whether they were executed and delivered voluntarily by the Pacific Coast & Norway Packing Company.

Mr. ROBERTSON.—Same objection as to previous question.

A. The occasion for the execution of these instruments was to further protect all the creditors alike, and avoid the expense and occasion of appointing ancillary receivers in Alaska. Every officer and every director desired it. One director, the deposed manager, who was in consequence hostile to the company, had been opposed to any receivership, but as soon as receivers were appointed he favored with the rest having them hold and conduct all of the assets of the business, unifying control.

Int. 12. What, if anything, did you have to do with the execution and delivery of said instruments, and state fully the circumstances and conditions surrounding and leading up to their execution.

Mr. ROBERTSON.—We object to that as incom-

(Deposition of Winfield R. Smith.)

petent, irrelevant and immaterial, and multifarious.

[80]

A. It was agreed between the receivers and the company informally, subject to the approval of the court at Seattle, that instead of going farther with Alaska receivers the company should make an immediate conveyance of its Alaska assets to the Washington receivers, who already were in possession of these assets, and operating in Alaska, as stated above. I was at Juneau at the time. It was necessary to dispose of the question of the Alaska assets definitely one way or another without further delay. I therefore covered the matter as well by cable as I could. Naturally we wished the Court's approval of the receivers' taking conveyance of the legal title of these assets, and also we desired the Court to know that the company was favorable to the transfer of the assets. Therefore it was arranged that the receivers and my law assistant, acting for me, should go before the Court the next day at Seattle, along with the president of the company, and the matter of a voluntary transfer be submitted to the Court and approved by him. This was accordingly done. The Court particularly assured himself that the company favored and desired to make such transfer, and thereupon he sanctioned the conveyance to the receivers. As soon as this was done, the bill of sale and deed were immediately executed.

Int. 13. State whether or not, if you know, the trustees and stockholders of the Pacific Coast & Nor-

(Deposition of Winfield R. Smith.)

way Packing Company authorized or acquiesced in the execution and delivery of said instruments.

Mr. ROBERTSON.—We object to that as not the best evidence, calls for a conclusion, incompetent, irrelevant and immaterial.

A. Every trustee, and I believe every stockholder, certainly the vast majority of the stockholders, approved the execution of these instruments transferring the legal title of the Alaska assets to the receivers. [81]

Int. 14. State fully whether or not, if you know, the Superior Court of King County, being the court of the receivership, compelled the execution and delivery of the said instruments, or whether the same were executed voluntarily by the said Pacific Coast & Norway Packing Company without compulsion.

Mr. ROBERTSON.—We object to that as calling for a conclusion both of law and of fact, not the best evidence, incompetent, irrelevant and immaterial.

A. There was no thought of compelling the company to execute the instruments of transfer. The Court not only did not attempt to do this, but explicitly rested its order upon the acquiescence and consent of the company.

Int. 15. If the said Court did enter any order in the premises, please so state; and attach a certified copy of said order as a part of your answer to this question.

Mr. ROBERTSON.—We object to that as incompetent, irrelevant and immaterial.

A. The Court did enter an order, and I hereto at-

(Deposition of Winfield R. Smith.)

tach a certified copy of that order, marked exhibit "C."

Int. 16. State, if you know, why and under what circumstances the said order was entered, and why the said written transfers were ordered, executed and delivered.

Mr. ROBERTSON.—We object to that as not the best evidence, multifarious, incompetent, irrelevant and immaterial, and calling for a conclusion of law.

A. I have already fully answered this question.

Int. 17. State whether there has been any active co-operation throughout the receivership, between the receivers and creditors of Pacific Coast & Norway Packing Company; and if so, state by and through whom the said creditors actively co-operated with said receivers.

Mr. ROBERTSON.—We object to that as incompetent, irrelevant, immaterial, not the best evidence, calls for a conclusion, and is multifarious. [82]

A. Yes.

Int. 18. If you have mentioned a creditors' committee, state when such committee was selected, how and by whom, of whom it consists, and why these persons were selected, if you know.

Mr. ROBERTSON.—Same objection as to previous question.

A. I have already answered this in part. The committee was selected at the time the creditors met in Seattle, I think on September 22, 1914. The four representatives were, Mr. Lewis Pattullo, A. J. Speckert, E. Morganstern and John McLean. As

(Deposition of Winfield R. Smith.)

stated, they were selected because they represented the four largest unsecured creditors, who therefore had most at stake in a successful administration and outcome.

Int. 19. State, if you know, what at that time was, and since has been, the attitude of the creditors of Pacific Coast & Norway Packing Company towards the assets in Alaska, and especially towards the immediate delivery of the said assets to the receivers upon their appointment, and the retention of such assets since by the receivers, and towards the written transfers of the said assets hereinabove mentioned and set forth.

Mr. ROBERTSON.—Same objection as to interrogatory No. 17.

A. I have already answered this in part. The creditors' committee, and so far as we know, all of the creditors except McDonald, favored the transfer of the title to these Alaska assets to the Washington receivers. Getting the entire management into the hands of one set of receivers was expressly favored by the creditors' committee, and the transfers of the title to them were expressly approved by the committee.

Int. 20. State whether the conveyance of the assets of said Pacific Coast & Norway Packing Company unto said receivers, including the gasoline boat "Bernice," was made under and by virtue of any Washington statute or under compulsion of law, [83] or whether the deeds of conveyance were intended common law deeds. Answer fully.

(Deposition of Winfield R. Smith.)

Mr. ROBERTSON.—We object to that as incompetent, irrelevant and immaterial, not the best evidence, calls for both a conclusion of law and of fact.

A. The deed and the bill of sale to the receivers covering the Alaska assets of the company were made wholly voluntarily. There are statutes in the State of Washington providing for involuntary transfers, but these statutes did not enter into this matter at all. There was no occasion or thought of an involuntary or compelled transfer of these assets.

Int. 21. Do you know, or can you set forth, any other matter or thing which may be of a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this, your examination, or the matters in question in the cause? If yes, set forth the same fully and at large in your answer.

Mr. ROBERTSON.—We object to that as being too general.

A. I think of nothing further in answer to these interrogatories, except that the "Bernice" is of eleven tons burden only. The "Bernice" was in the possession and control of the receivers from the day of their appointment. The bill of sale was delivered immediately upon its execution.

Cross-interrogatories.

Cross-int. 1. In what court and in what State were E. Schoenwald and S. T. Hills appointed receivers for the Pacific Coast & Norway Packing Company?

(Deposition of Winfield R. Smith.)

A. Superior Court of King County, Washington.

Cross-int. 2. Was the gasoline boat "Bernice" in the State of Washington at any time during the period from September 15, 1914, to April 28, 1915?

A. No. [84]

Cross-int. 3. Was the gasoline boat "Bernice" at all times within the jurisdiction of the District Court of the First Division of the Territory of Alaska, during the period from September 15, 1914, to April 28, 1915? If your answer is in the negative, state the periods of time, giving dates, that said boat was outside the jurisdiction of said court.

A. It was at all times in Alaska, centering in Petersburg.

Cross-int. 4. Was the gasoline boat "Bernice," during the period from September 15, 1914, to February 8, 1915, licensed under documents issued by the officials of the United States Customs District for Alaska? A. I am not certain.

Cross-int. 5. Was any bill of sale or other document conveying the gasoline boat "Bernice" from the Pacific Coast & Norway Packing Company to E. Schoenwald and S. T. Hills, as receivers, or to either of them as receivers, filed for record or recorded with the United States Customs officials for the Customs District of Alaska, at any time prior to February 10, 1915? If your answer is in the affirmative, state the date that said bill of sale or other document was recorded with said officials.

A. No; neither before February 10, 1915, nor after.

Cross-int. 6. Have E. Schoenwald and S. T. Hills,

(Deposition of Winfield R. Smith.)

or either of them, ever been appointed receivers of the Pacific Coast & Norway Packing Company, by any court of the District or Territory of Alaska?

A. No; the Alaska court has appointed no receivers.

Cross-int. 7. Was the conveyance or transfer of the gasoline boat "Bernice" to Schoenwald and Hills, or to either of them, made prior to the appointment of those gentlemen as receivers by the Superior Court of King County, State of Washington?

A. No.

Cross-int. 8. Did Honorable Everett Smith, Judge of the Superior [85] Court of King County, for the State of Washington, on or about October 26, 1914, make an order directing that the Pacific Coast & Norway Packing Company transfer all of its personal assets in Alaska to Schoenwald and Hills, as receivers? A. Yes.

Cross-int. 9. Was the bill of sale or conveyance of the gasoline boat "Bernice" to Schoenwald and Hills as receivers, made in pursuance to the order of the Superior Court of King County, entered by that court on or about October 26, 1914?

A. I have already fully explained this in my direct examination.

Cross-int. 10. Was a meeting of the board of directors or trustees of the Pacific Coast & Norway Packing Company held for the purpose of authorizing and acquiescing in the execution and delivery of the instrument conveying the gasoline launch "Bernice" to Schoenwald and Hills as receivers?

(Deposition of Winfield R. Smith.)

A. No, there has been no formal meeting of the board of trustees held since the receivers were appointed.

(Cross-interrogatories 11, 12, 13, 14 and 15 not read, as they refer to cross-interrogatory No. 10, and no meeting was held.)

Cross-int. 16. Was a meeting of the stockholders of the Pacific Coast & Norway Packing Company held for the purpose of authorizing and acquiescing in the execution and delivery of the instrument conveying the gasoline launch "Bernice" to Schoenwald and Hills as receivers?

A. No formal meeting of the stockholders has been held since the last annual meeting prior to the receivership.

(Cross-interrogatories Nos. 17, 18, 19, 20, 21, 22 and 23 not read, as they refer to the holding of a meeting, which was not held.)

Cross-int. 24. Did you, as attorney for said Schoenwald and Hills, as receivers, cause to be made and entered the order of the Superior Court of King County, dated on or about October 26, [86] 1914, which order is referred to in cross-interrogatory No. 8?

A. I have fully answered this in my direct examination.

Cross-int. 25. Did you dictate or draw said order of the Superior Court of King County, of October 26, 1914? If you did not, give the name of the person who did.

(Deposition of Winfield R. Smith.)

A. No, I believe it was drawn by Mr. Lucas C. Kells in my office.

Cross-int. 26. Has a committee of Alaskan creditors been selected and appointed in Alaska to co-operate with Schoenwald and Hills as receivers?

A. No.

Cross-int. 27. If you have stated that there has been a committee of Alaskan creditors selected and appointed in Alaska to co-operate with Schoenwald and Hills as receivers, state the names of said Alaskan creditors, who are members of said committee, giving their Alaska address.

(No answer to above question.)

Cross-int. 28. State the names of the creditors of said Pacific Coast & Norway Packing Company who live in Alaska.

A. I do not recall the names of all the creditors there. They are relatively few and the claims small.

Cross-int. 29. State the dividend that has been paid to Alaskan creditors by Schoenwald and Hills, as receivers, up to and including October 12, 1915.

A. No dividend has been paid by the receivers.

Cross-int. 30. Were Schoenwald and Hills appointed receivers upon a petition of one Roy W. Nevin, in cause No. 103,639 of the Superior Court of King County, state of Washington?

A. The receivers were appointed on the suit of Roy W. Nevin, cause No. 103,639, in the Superior Court of King County, Washington.

Cross-int. 31. Was Roy W. Nevin a creditor of the Pacific Coast & Norway Packing Company at

(Deposition of Winfield R. Smith.)

the time of the filing of his petition in cause No. 103,639 of the Superior Court of King [87] County, State of Washington? A. Yes.

Cross-int. 32. Was a conveyance of the gasoline boat "Bernice" to Schoenwald and Hills, as receivers, made after Honorable Robert W. Jennings, Judge of the District Court for the First Division of Alaska, had refused to grant the petition of Roy W. Nevin for the appointment of an ancillary receiver of the Pacific Coast & Norway Packing Company in the Territory of Alaska?

A. Nevin never petitioned for the appointment of ancillary receivers in Alaska. The receivers petitioned for the extension of the receivership over Alaska, but no disposition was ever made of this petition, as I have explained in my direct examination.

Cross-int. 33. Was Roy W. Nevin a creditor of the Pacific Coast & Norway Packing Company—at the time of the filing of his petition in the District Court of Alaska; for the appointment of a receiver for said corporation?

(No answer to the above question.)

Cross-int. 34. Of what state has E. Schoenwald been a citizen and resident since September 15, 1914?

A. State of Washington.

Cross-int. 35. Of what state has S. T. Hills been a citizen and resident since September 15, 1914?

A. State of Washington.

Cross-int. 36. Was the Pacific Coast & Norway Packing Company insolvent at the time of the appointment of Schoenwald and Hills as receivers, of

(Deposition of Winfield R. Smith.)

such, by the Superior Court of King County, state of Washington?

A. The assets of the Pacific Coast & Norway Packing Company were valued in a sum considerably in excess of its liabilities at the time of the appointment of the receivers. [88]

Cross-int. 37. Was the conveyance to Schoenwald and Hills as receivers of the gasoline boat "Bernice," as well as the other personal assets in Alaska of the Pacific Coast & Norway Packing Company, necessary to the successful conduct of the receivership by said Schoenwald and Hills, as receivers?

A. Transfer of the assets of Alaska to the receivers made for the sake of efficient, economical, unified administration, to the benefit of all the creditors alike.

Cross-int. 38. Are all of your answers to the direct and cross-interrogatories propounded to you in this deposition based upon your personal and actual knowledge? If your answer to this question is in the negative, state which answers are not, indicating by the particular number of each direct and cross-interrogatory to which your answers are not based upon personal and actual knowledge.

A. Speaking broadly my answers are based upon personal and actual knowledge. So far as this is not the case, it appears in the answers themselves.

Cross-int. 39. Are you an impartial witness in view of the fact that you are one of the attorneys for the plaintiff in the case in which this deposition is being taken?

(Deposition of Winfield R. Smith.)

A. My only interest or concern is as an attorney and as myself a general creditor for approaching \$700 of Pacific Coast & Norway Packing Company. I have no other interest or concern whatever, and my connection does not affect my testimony in the least.

Cross-int. 40. Have you dictated or outlined the plan of procedure under which Schoenwald and Hills, as receivers, are acting in endeavoring to obtain control of the assets of the Pacific Coast & Norway Packing Company, which are located in Alaska?

(Answer stricken as not being responsive.)

Cross-int. 41. It is not to your personal interest to have the assets in Alaska of the Pacific Coast & Norway Packing Company [89] administered by the Courts of Washington?

A. I have no private personal interest in the matters of the receivership. As a creditor of the company and as attorney for the receivers I am very desirous to see the matters administered in the best and most efficient way for the benefit of all creditors alike, and a very important element to this end is to have all the assets and operations of the company held and administered as a unit, as stated.

Judge WINN.—Now, if the Court please, we offer in evidence the exhibits which are identified in the answer of Mr. Smith to the 10th interrogatory—that is, the deed which conveys the real estate, and the bill of sale which purports to convey the personal property, and are referred to in Mr. Smith's answer to the tenth interrogatory as exhibits "A" and "B."

Judge GUNNISON.—We object to the admission

(Deposition of Winfield R. Smith.)

of the instrument offered as exhibit "A" connected with the deposition, on the ground that it is incompetent, irrelevant and immaterial; that it purports to be the action of a corporation—there is no evidence that the corporation itself has executed it, or authorized its execution, the testimony of the witness being to the effect that certain of the directors and certain of the stockholders desired these various matters to be done. This document has no reference whatever to the subject matter of the controversy, and it is immaterial and irrelevant.

As to the exhibit "B" tendered by the plaintiffs, we object to it on the ground that it is not properly executed by the corporation, being signed only by the Pacific Coast & Norway Packing Company, by C. O. Steberg, its President, and there is what purports to be a corporate seal,—there is nothing to indicate that it is the seal of the corporation. The instrument is without consideration, and there is nothing to indicate that the corporation authorized the execution of it. [90] We think it is incompetent because of its imperfect execution; we think it is immaterial because there is no record of its ever having been recorded anywhere. So far as this case is concerned, that deed from the company—even if it were properly executed—to Schoenwald and Hills, without a record somewhere in some office in this Territory of which the defendant is a resident, could not be notice to the defendant—therefore we think it is immaterial and incompetent.

The COURT.—Objection overruled.

(Whereupon said deed and bill of sale were received in evidence, and marked, respectively, Plaintiffs' Exhibit "J" and "K.")

Judge WINN.—Now, in answer to the 15th interrogatory Mr. Smith identifies the court order that was made in ratification of the action of the corporation in deeding over this property under those two instruments which have just been received in evidence, and is identified in his answer as exhibit "C." We now offer that order.

Judge GUNNISON.—We object to it as incompetent, irrelevant and immaterial.

The COURT.—Objection overruled.

Judge GUNNISON.—That order is not binding on the defendant, was not brought to the attention of the defendant, and is immaterial.

The COURT.—Objection **overruled**.

(Whereupon said order was received in evidence and marked Plaintiffs' Exhibit "L.")

Judge WINN.—Will you admit, Judge Gunnison, there was a demand made upon the United States Marshal for the return of the gasoline boat "Bernice"?

Mr. ROBERTSON.—Demand made by Schoenwald and Hills, as receivers, in the capacity in which this suit was brought?

Judge WINN.—A demand made on the Marshal to turn over the gasoline [91] boat "Bernice"—demand made by us as attorneys for the plaintiffs in this suit?

Judge GUNNISON.—We will admit that.

(Deposition of Lucas C. Kells.)

Judge WINN.—We offer in evidence, may it please the Court, the entire deposition of the witness Winfield R. Smith.

Judge GUNNISON.—We object to that as incompetent, irrelevant and immaterial except as to the portions that have been read to the jury.

The COURT.—Very well, the record may show that you offered it.

Judge WINN.—We now offer in evidence the deposition of the witness C. O. Steberg.

The COURT.—The record may also show that you offered that.

Judge WINN.—We also offer the deposition of the witness L. C. Kells.

The COURT.—The record may show that you offered it.

(Whereupon a recess was had for 10 minutes.)

The foregoing are the depositions of L. C. Kells, C. O. Steberg and Winfield R. Smith, excepting only those portions thereof which were stricken by the Court, and plaintiffs allowed an exception. The answers, in which is contained the portion so stricken, are as follows,—the stricken portions appearing in parentheses.

Deposition of L. C. Kells.

Ans. to the 13th direct interrogatory. I prepared the instruments and they were executed and delivered in my presence. The officers, principal stockholders and creditors concurred in wishing to have the control of all the company's affairs in the hands of the company's receivers at Seattle, where its principal

(Deposition of Lucas C. Kells.)

office has always been, and where its business interests were centered. (It was considered that it would be much more economical and harmonious if the company's management was unified in their hands. It was contemplated [92] that this could be accomplished either by having the Washington receivers made ancillary receivers in Alaska or by transferring legal title to the Alaska assets to the receivers by a common law transfer. When it was found that the receivers in Washington probably could not be made sole ancillary receivers in Alaska, it was decided to adopt the other alternative. Mr. Smith cabled directions to me as to preparing the instruments, having them executed and getting the Court's approval. I got Mr. Schoenwald and Mr. Steberg, the president of the company, in the office. I acquainted them with the contents of Mr. Smith's cable, dictated the deed and bill of sale and the order of court sanctioning the arrangement. While the instruments were being prepared we three went together before the court with the order. I acquainted the judge with the contents of Mr. Smith's cable, which he read, and explained the purpose of the transfer, telling the Court that all interested parties were agreeable to the plan. The judge then asked Mr. Steberg whether the company desired to make the transfer. Mr. Steberg answered in the affirmative. The Court then asked Mr. Schoenwald if the receivers favored this plan and he assented. The Court then signed the order.)

Ans. to direct interrogatory No. 19. (The cred-

(Deposition of Lucas C. Kells.)

itors have approved all the measures taken.)

Ans. to direct interrogatory No. 21. (As the "Bernice" was neither registered nor enrolled, weighing only eleven tons, no record was made of the bill of sale in the customs office. Upon inquiry and investigation of the law I understood that according to the rules and regulations of the customs office a license would only be issued to the record owner. However, there is nothing whatever in this regulation providing that failure to record shall affect the title. The only provision in this respect that I have been able to find is section 4192 [93] of the Revised Stats., 7 Fed. Stat. Ann., p. 42, which requires a record to be made of the transfer of registered or enrolled vessels, and decisions under this section hold that even this is not necessary to protect one's title as against those having notice of the transfer or who have not actually acted in reliance upon the record title.)

Ans. to cross-interrogatory No. 30. Yes, (and the company and creditors concurred in the petition.)

Ans. to cross-interrogatory No. 36. No. (the Court found that its assets exceeded its liabilities but appointed the receivers upon the statutory grounds that its property was in danger of being lost or materially impaired in value, and that it was in immediate danger of insolvency.)

Ans. to cross-interrogatory No. 40. No, (I have not done so but often consulted with Mr. Smith and Mr. Schoenwald and the other interested parties concerning the matter.)

Deposition of C. O. Steberg.

Ans. to cross-interrogatory No. 24. No, (there has been one general committee of all the creditors, being one person for each of the four largest unsecured creditors.)

Ans. to cross-interrogatory No. 26. I haven't any list of them (but the other Alaska creditors were few and small.)

Ans. to cross-interrogatory No. 28. (Schoenwald was appointed first and then Hills a little later, after a large meeting of creditors.)

Deposition of Winfield R. Smith.

Ans. to direct interrogatory No. 8. All the property was immediately turned over to the receiver, (that in Washington under the court order, that in Alaska voluntarily. When the appointment of Mr. Hills as coreceiver was asked by the creditors and the company, Mr. Hills stepped into the same [94] position as Mr. Schoenwald.)

Ans. to direct interrogatory No. 10. Yes, (subsequently legal title was transferred to the receivers.) Real estate by deed; personal property by bill of sale, expressly including the "Bernice." The original writings are hereto attached, and marked respectively Exhibits "A" and "B."

Ans. to direct interrogatory No. 11. The occasion for the execution of these instruments was to further protect all the creditors alike and avoid the expense and occasion of appointing ancillary receivers in Alaska. (The company and the creditors were alike satisfied with the receivership and the receivers. The

(Deposition of Winfield R. Smith.)

important thing then was to have one single administration of all the assets in the business with as little expense and multiplication of court machinery as possible. Virtually the affairs of the company had always been conducted at Seattle, practically as much so as though its cannery and fishing operations had been located at Seattle. The principal office was always here. The policy of the company was determined here and the officers and five out of seven directors lived in or near Seattle. The board held its meetings here. The vast majority of the creditors in numbers and amount were Seattle creditors or eastern creditors from whom purchases were made at Seattle. All of the purchasing was done here except the minor matters that had to be bought at Petersburg. There were few Alaska creditors. Its output was all marketed at or from Seattle. The transfer of the Alaska assets to the receivers was made entirely voluntarily by the company.) Every officer and every director desired it. One director, the deposed manager, who was in consequence hostile to the company, had been opposed to any receivership, but as soon as receivers were appointed he favored with the rest having them hold and conduct all of the assets of the business, unifying control. [95]

Ans. to direct interrogatory No. 12. (The company, its officers, directors, stockholders and creditors, all of whom, unless an insignificant minority of the creditors—including Mr. McDonald in Alaska who was sore at the company—desired to get all of the assets into the control of one set of receivers as

(Deposition of Winfield R. Smith.)

quickly and as simply as possible. To this end the receivers made application in the District Court of Alaska at Juneau to extend their receivership over the Alaska assets. Then it appeared that this might mean the appointment of one resident of Alaska as a receiver, which would in this instance complicate the administration and increase the expense; also technical questions of proper procedure under the jurisdiction of the Alaska court arose. It also appearing that there were very few Alaska creditors, who it seemed, like all the creditors in other jurisdictions, were favorable to a single administration centering in Seattle as the natural and really necessary place.) It was agreed between the receivers and the company informally, subject to the approval of the court at Seattle, that instead of going farther with Alaska receivers the company should make an immediate conveyance of its Alaska assets to the Washington receivers, who already were in possession of these assets, and operating in Alaska, as stated above. I was at Juneau at the time. It was necessary to dispose of the question of the Alaska assets definitely one way or another without further delay. I therefore covered the matter as well by cable as I could. Naturally we wished the Court's approval of the receivers' taking conveyance of the legal title of these assets, and also we desired the Court to know that the company was favorable to the transfer of the assets. Therefore it was arranged that the receivers and my law assistant, acting for me, should go before the Court the next day at Seattle, along

(Deposition of Winfield R. Smith.)

with the president of the company, and the matter of a voluntary transfer [96] be submitted to the Court and approved by him. This was accordingly done. The Court particularly assured himself that the company favored and desired to make such transfer, and thereupon he sanctioned the conveyance to the receivers. As soon as this was done, the bill of sale and deed were immediately executed.

Ans. to direct interrogatory No. 14. (I have already largely answered this in my answer to 12.) There was no thought of compelling the company to execute the instruments of transfer. The Court not only did not attempt to do this but explicitly rested its order upon the acquiescence and consent of the company, (stating that he approved so long as the company desired it. The president of the company, Mr. C. O. Steberg, appeared in person before the Court.)

Ans. to direct interrogatory No. 15. The Court did enter an order (under the circumstances and for the reasons stated above) and I hereto attach a certified copy of that order. (This was drawn by my office on receipt of my cable. It is not worded exactly as I would have done. The aforesaid order is) marked exhibit "C."

Ans. to direct interrogatory No. 17. Yes, (with the exception of Mr. McDonald and P. Duff & Sons, whose suit and wholesale garnishment helped to bring about the receivership as stated above, there has been entire harmony and active co-operation throughout between the receivers and the creditors

(Deposition of Winfield R. Smith.)

of the company. A very largely attended meeting of the creditors, or attorneys representing them, including the creditors both within and without the state of Washington, was held at Seattle a few days after Mr. Schramm was appointed. Matters were gone over fully at that meeting and at the suggestion of the receiver a committee of creditors was appointed, being one representative for each of the four largest unsecured [97] creditors, namely, Balfour, Guthrie & Co., Schwabacher Bros. Company, Western Hardware & Metal Company and the Standard Oil Company.)

Ans. to direct interrogatory No. 19. I have already answered this in part. The creditors' committee and so far as we know all of the creditors except McDonald, favored the transfer of the title to these Alaska assets to the Washington receivers. Getting the entire management into the hands of one set of receivers was expressly favored by the creditors' committee and the transfers of the title to them were expressly approved by the committee. (McDonald wished, without right, to be preferred to all others.)

Ans. to direct interrogatory No. 21. The deed and the bill of sale to the receivers covering the Alaska assets of the company (are common law transfers and were so intended. They) were made wholly voluntarily, (not under compulsion of any law or court.) There are statutes in the state of Washington providing for involuntary transfers but these statutes did not enter into this matter at all.

(Deposition of Winfield R. Smith.)

There was no occasion or thought of an involuntary or compelled transfer of these assets. (There was nothing farther from the fact. This transfer has none of the features of involuntary transfers for the benefit of creditors under the Washington law and practice.)

Ans. to direct interrogatory No. 21. I think of nothing further in answer to these interrogatories, except that the "Bernice" is of eleven tons burden only (and therefore there is no need under the law of requiring any bill of sale in the customs-house to effect a valid and binding transfer.) The "Bernice" was in the possession and control of the receivers from the day of their appointment (by the voluntary action of the company, just as the legal title was in them from the day) the bill of sale (was executed and delivered. [98] It) was delivered immediately upon its execution. (There was no intention to have anything of record, either in the custom-house or elsewhere, inconsistent with these facts. If there is anything inconsistent with them there, it is through a mistake and oversight.)

Cross-interrogatory No. 26. Ans. No. (The creditors' committee named above was acting for all the creditors, regardless where they happened to live.)

Ans. to cross-interrogatory No. 28. I do not recall the names of all the creditors there. They are relatively few and the claims small. (They have all been treated alike and only McDonald has tried to prefer himself over the rest.)

(Deposition of Winfield R. Smith.)

Ans. to cross-interrogatory No. 29. No dividend has been paid by the receivers, (but a considerable one will soon be paid to all creditors regardless of residence.)

Ans. to cross-interrogatory No. 36. The assets of the Pacific Coast & Norway Packing Company were valued in a sum considerably in excess of its liabilities at the time of the appointment of the receivers (and this was shown to the Superior Court of King County.)

Ans. to cross-interrogatory No. 37. Transfer of the assets of Alaska to the receivers made for the sake of efficient, economical, unified administration, to the benefit of all the creditors alike. (As I have explained in my direct examination the business of the company has always centered at Seattle, that was the natural and only effective and economical point for the management of its affairs to center. It would have been a business impossibility for the management to have been divided between Seattle and any point in Alaska.)

Ans. to cross-interrogatory No. 40. (Messrs. Schoenwald and Hills as receivers consult with me as the general attorney and I advise them as to matters in Alaska, the same as matters [99] in Washington, except in so far as the Alaska matters call for legal counsel. They have control of the Alaska assets and have had at all times, save for McDonald's attachment of the "Bernice" in his effort to put himself ahead of everybody else.)

(The following are the objections to answers in

(Deposition of Winfield R. Smith.)

the deposition of Winfield R. Smith, made by counsel for the defendants and filed with the clerk of the court:)

Ans. 6. All not responsive—may have been reason why *they applied* for receiver, but court records are reasons why receiver was appointed.

Ans. 7. Immaterial.

Ans. 8. All of it not responsive, and particularly all after the first line of answer—also volunteered.

Ans. 9. All not responsive, commencing with words “transfer of” and is not best evidence; volunteered.

Ans. 10. Move to strike all as not responsive and not the best evidence, except “Yes” and “The original writings, etc.”

Ans. 11. Not best evidence, hearsay; all of it unresponsive, and particularly all after the words “ancillary receivers in Alaska” in the third line; also volunteered.

Ans. 12. Move to strike all as volunteered and not responsive, except “I therefore covered the matter as well by cable as I could.” The other parts of answer are on its face hearsay.

Ans. 13. Move to strike all as volunteered and not responsive, and particularly all that part commencing with “approved the execution” to end of answer; also not the best evidence.

Ans. 14. Move to strike as hearsay, as it appears from answer to question 12 that he was in Alaska at the time, and move to strike all as not responsive and volunteered.

(Deposition of Winfield R. Smith.)

Ans. 15. Move to strike all as not responsive and volunteered, except words "The Court did enter an order, and I hereto attach a certified copy of that order. The aforesaid order [100] is marked exhibit "C."

Ans. 17. Move to strike all of answer as immaterial, and the whole thereof as not responsive and volunteered except "Yes" and commencing with words "The four largest," etc.

Ans. 18. Move to strike all answer as immaterial, and all of it as volunteered and not responsive, commencing with the words "Who therefore, etc."

Ans. 19. Move to strike all of answer as immaterial, and all of answer commencing with "McDonald wished" as not responsive and volunteered.

Ans. 20. Move to strike all answer as conclusions of law; not responsive; volunteered.

Ans. 21. Move to strike all answer as stating conclusion of law; volunteered; not responsive.

Cross-interrogatories.

Ans. 9. Failure to answer question.

Ans. 11 to and including 15 fails to answer.

Ans. 17 to and including 23 fails to answer.

Ans. 24. Fails to answer.

Ans. 26. Move to strike, volunteered; not responsive, all after "No."

Ans. 27. Fails to answer.

Ans. 28. Not responsive and volunteered, all commencing with words "They are relatively few," etc.

Ans. 29. Not responsive and volunteered, all commencing with "but a considerable," etc.

(Testimony of N. L. Burton.)

Ans. 36. Not responsive and volunteered, commencing with "and this was shown," etc.

Ans. 37. All of answer as volunteered and not responsive.

Ans. 38. Not responsive.

Ans. 40. All is volunteered and not responsive, commencing with words "They have control of the Alaska," etc.

Ans. 41. All volunteered and not responsive, after "As a creditor of the company," etc. [101]

Testimony of N. L. Burton, for Plaintiffs.

N. L. BURTON, introduced as a witness on behalf of the plaintiffs, being first duly sworn to tell the truth, the whole truth and nothing but the truth, testified as follows:

Direct Examination.

(By Judge WINN.)

Q. State your name, residence and business.

A. Newark Lincoln Burton; reside in Juneau; attorney by profession.

Q. How long have you been practicing law in Juneau, Mr. Burton.

Judge GUNNISON.—We will admit he is an attorney at law and has been practicing here for a long time.

A. About ten years.

Q. I will ask you if you are personally acquainted with Mr. Winfield R. Smith, one of the witnesses who has testified in this case by deposition?

A. Yes, I am.

Q. Do you remember the occasion, Mr. Burton, of

(Testimony of N. L. Burton.)

Mr. Smith coming to Juneau on some mission in connection with this receivership matter?

A. I do.

Q. You met Mr. Smith here at that time?

A. I did; I met him prior to that time, and met him at that time as well.

Q. You took no part in any proceedings, though, that Mr. Smith had in this court?

A. Nothing more than looking up some law, in the office.

Q. You were not in the courthouse at the time Mr. Smith and I presented any matters to this Court?

A. I was not.

Q. Did you talk to Mr. Smith concerning this case?

Mr. ROBERTSON.—That is objected to as incompetent, irrelevant and immaterial. Any conversation which counsel might have [102] had with the attorney for the receiver in this case cannot be binding in any way upon this defendant, or on these defendants in this case.

Judge WINN.—It is only preliminary.

The COURT.—Objection overruled.

Judge GUNNISON.—Exception.

A. I did.

Q. You know Mr. Robertson, of the firm of Gunnison & Robertson? A. I do.

Q. How long have you known Mr. Robertson?

A. Pretty nearly ever since I have been in Juneau—probably nine years.

Q. I will ask you if, about the time that Mr. Smith

(Testimony of N. L. Burton.)

came here to attend to some matters in this receivership matter, you had any conversation with Mr. Robertson, one of the attorneys for the defendant in this case, of the firm of Gunnison and Robertson?

A. I did, shortly after Mr. Smith had been here.

Q. Do you remember approximately that date?

A. It was towards the end of October, the first conversation I had with Mr. Robertson.

Q. October what year? A. 1914.

Q. Did you know at that time in what capacity Mr. Robertson was acting, or in what connection or business relation he stood in regard to the defendant McDonald in this case?

Mr. ROBERTSON.—We object to that because this case was not in existence at that time—it was not commenced until January.

The COURT.—He has just been asked whether he knew.

A. I did.

Q. I will ask you as to whether or not you knew at that time that Mr. Robertson was representing McDonald and had the [103] promissory notes which were the basis of the suit, out of which this judgment accrued? A. I did.

Q. Now, I will ask you to state to the jury and Court what conversation or conversations you had with Mr. Robertson about his claim, and about any transfers, and so forth, that were being made of property of the Pacific Coast & Norway Packing Company.

Judge GUNNISON.—We object to that as incom-

(Testimony of N. L. Burton.)

petent, irrelevant and immaterial and not binding on this defendant; and further that the question does not ask with reference to conversations about any transfers that had been made, but transfers which were about to be made; and it is leading and suggestive.

Judge WINN.—I am going to follow it up and show that these conversations were repeated two or three times, just before the transfers were made and after the transfers were made, and that Mr. Robertson knew the transfers were made.

Judge GUNNISON.—We think it is further incompetent for the reason that conversations between them could not, in any way, bind the clients, or either of them.

The COURT.—Your objection is that this testimony is incompetent, irrelevant and immaterial.

Judge GUNNISON.—Yes.

The COURT.—That is all of your objection?

Judge GUNNISON.—Yes.

The COURT.—Very well; if it is immaterial the Court can strike it out. It may be admitted, subject to a motion to strike later on.

Judge GUNNISON.—Of course there is the further objection that it is not binding on the defendant.

The COURT.—Objection overruled.

Judge GUNNISON.—Exception. There is a further objection to that, that it calls for more than one conversation—we would [104] like to have the question limited.

Q. Tell the first conversation you had with Mr. Robertson.

(Testimony of N. L. Burton.)

A. At the time that Mr. Smith was up here on the matter of the ancillary receivership, on a Sunday in October, I came to the office; he saw me and stated—

Judge GUNNISON.—Who is that, Mr. Robertson or Mr. Smith?

The WITNESS.—I am simply fixing the time of that conversation.

Judge GUNNISON.—We object to anything that Mr. Smith said.

The COURT.—Yes, don't give the conversation between Mr. Smith and yourself—fix the time in your own mind.

A. About the end of October, 1914, I had my first conversation with Mr. Robertson concerning a transfer of all the property, real and personal, of the Pacific Coast & Norway Packing Company to the receivers. In that conversation I stated to Mr. Robertson that there had been no receiver appointed for Alaska—no ancillary receiver—and that it had been decided to transfer the property of the Pacific Coast & Norway Packing Company to the receiver for the benefit of the creditors, and that I had been assured that dollar for dollar would be paid to each and all of the creditors on their claims. That is the first conversation I had. I also asked him in that conversation—I think it was in that conversation; if it wasn't in that conversation, it was a few days afterwards—to send his claim for the parties he represented to the receivers—

Q. What claim did you have reference to that he was representing?

(Testimony of N. L. Burton.)

A. The claim of D. N. McDonald, one of the defendants in this case.

Q. Does that claim have anything to do with the suit that he brought upon which the attachment was sued out?

A. It is the claim upon which the attachment was sued out.

Q. I will ask you whether or not Smith knew that Mr. Robertson had a claim against this Pacific Coast & Norway Packing Company?

Judge GUNNISON.—We object to that as incompetent, irrelevant and [105] immaterial, what Mr. Smith knew.

The COURT.—Yes, I don't see what Mr. Smith has to do with it.

Q. I will ask you whether or not Mr. Smith has been associated with us in the conduct of both the suit that was brought by Mr. Robertson on the promissory notes, the suit which the attachment was sued out in, and also all matters pertaining to the affairs of this Packing Company?

Judge GUNNISON.—That is objected to as incompetent, irrelevant and immaterial.

The COURT.—It is not what Mr. Smith said; if the testimony is relevant at all, it is relevant only on what Mr. Robertson said, as the agent of McDonald.

Q. Now, do you remember what Mr. Robertson stated to you, on this first occasion, when you went to him and talked to him about this McDonald claim?

A. I couldn't state what Mr. Robertson replied. I do know, however, that he seemed to acquiesce—

(Testimony of N. L. Burton.)

Judge GUNNISON.—We object to the statement of counsel of what Mr. Robertson seemed to do.

The WITNESS.—I was going to correct that, Judge Gunnison.

Q. I will ask you if you remember in substance what Mr. Robertson's reply was when you put this proposition to him?

A. I am not able to just state what he did reply in substance; I can state generally what he gave me to understand from my conversation with him and his conduct and his apparent acquiescence.

Judge GUNNISON.—We move to strike that last phrase, "his apparent acquiescence."

The COURT.—He has not said anything yet. If you can state exactly what he said, state it; if you cannot state exactly what he said, you can state the substance of what he said.

A. I remember partly what he said at the time of that conversation—I think it was that particular conversation, but I [106] will not swear to that—it was either that conversation or a day or two afterwards—in that conversation he asked me the address of the receivers, for the purpose of sending the claim of D. N. McDonald, this particular claim, to the receivers, and I gave him that address and he made a memorandum of it; he had it on a piece of paper and of course I thought he sent the claim.

Judge GUNNISON.—That is objected to as incompetent, irrelevant and immaterial, what Mr. Burton thought.

Judge WINN.—That part may go out.

(Testimony of N. L. Burton.)

Q. Now, I will ask you if you had any other conversation with Mr. Robertson after the first conversation, about this conveyance having been made by this company to the receivers? A. I did.

Q. I will ask you to state to the jury substantially what that conversation with Mr. Robertson was.

Judge GUNNISON.—We object to that unless the time of the conversation is given.

The COURT.—Fix the time as near as you can.

Judge WINN.—I will withdraw that question.

Q. Do you remember approximately what time it was that you had the next conversation with Mr. Robertson concerning this McDonald claim and about any of the affairs of this company, especially the transfers that have been offered in evidence in this case?

A. As a matter of fact, Judge Winn, I had several conversations with Mr. Robertson and I cannot fix the dates, but I know I had a conversation only a short time after the first conversation—only a few days; it was sometime in November that I had the second conversation.

Q. Where was Mr. Robertson?

A. He was in our office.

Q. November of what year? [107]

A. 1914.

Q. Well, now, state if you had any conversation with him concerning these transfers and about the McDonald claim?

A. We talked about the McDonald claim, and I urged him to send his claim down to the receivers;

(Testimony of N. L. Burton.)

that we were sending our claim, and urged him to send his; it was the second time he took the address of the receivers. That conversation, I think—

Q. Was there anything said in that conversation concerning the property having been transferred to the receivers?

Judge GUNNISON.—We object to that as leading.

The COURT.—Yes, it is leading. Ask him what was said in that conversation, as near as he can remember.

Q. Go ahead under the Court's indication there and state.

A. In that second conversation, I don't believe anything was said about the property having been actually transferred, but in a later conversation I did tell him so.

Q. Now, about what time was it that you had any other conversation with Mr. Robertson concerning these affairs?

A. It was during the month of November—I don't remember just the date.

Q. 1914? A. 1914.

Q. Do you remember substantially what that conversation was?

A. I remember stating to Mr. Robertson—I think in a short conversation during the month of November,—that the transfers had been made to the receivers, and that the creditors of the corporation would be paid dollar for dollar; I told him that more than once—several times; I think Mr. Robertson will remember that.

(Testimony of N. L. Burton.)

Judge GUNNISON.—May we be considered, your Honor, as having objected to that question as incompetent, irrelevant and immaterial, and not binding on the defendants?

The COURT.—Yes. [108]

Q. Did you ever have any other or further conversation about these matters with Mr. Robertson?

A. I did later.

Q. Approximately what time and what place was that?

A. Later on—I don't know just the time, but I believe in December, 1914, or the early part of January, 1915—I ascertained from Seattle that the claim of Mr. McDonald had not been received by the receivers, and I was requested to see Mr. Robertson at once and get him to send the claim down. I called upon Mr. Robertson and stated to him that they had not received McDonald's claim, and asked him if he had sent it; he said no, he had been busy, and asked me the address of the receivers. I told him I had already given him the address and he said he had misplaced it. That was in Mr. Robertson's own private office. I went into our office, got the address of the receivers from someone in our office—the stenographer—and I returned to Mr. Robertson's office and gave him the address of the receivers to send McDonald's claim, this particular claim, to the receivers.

Q. Did you have any other or further conversation, or was this the last conversation?

A. That was the last conversation I had prior to

(Testimony of N. L. Burton.)

this judgment in the McDonald case.

Q. Now, after he commenced the suit and sued out the attachment, did you have any further conversation with him about his not having sent the claim in, or any matters pertaining to the affair?

Judge GUNNISON.—That is objected to as incompetent, irrelevant and immaterial. The lien of the attachment had already accrued and any conversation held after that time, or with reference to why he had not sent his claim to the receivers, is incompetent, irrelevant and immaterial. [109]

The COURT.—It would depend altogether on what the answer is—the question itself is not incompetent. Objection overruled.

Judge GUNNISON.—Exception.

A. Subsequent to the attachment in the McDonald case—subsequent to the bringing of that suit, when I ascertained it had been attached, I saw Mr. Robertson; I reminded him of our several conversations, and stated to him that I had thought and understood that he acquiesced and consented to the putting in of McDonald's claim, and that I had told him about the deed and about the conveyance of the property, and that he had misled me by asking for the receivers' address, and not having sent it, and that I had seen him the second or third time concerning that matter, and the second time gave him the address of these receivers to send that claim, during all of which times he had given me to understand it was perfectly agreeable to him, the execution of the deed and the matter of sending the claim to the receiver. I ex-

(Testimony of N. L. Burton.)

pressed myself to Mr. Robertson as being very much dissatisfied with that method between attorneys; and Mr. Robertson replied that he had not said to me that he consented for the transfer to be made, and he asked me if I could remember of his ever having done so. I told him candidly that I could not remember that he said yes or no, but his attitude, his conduct, and the way he took my conversations, and acted through all those conversations, certainly led me to believe that he agreed to this method of preserving the assets of this corporation. I reminded him at that time that I told him his client would be paid dollar for dollar, and he admitted that he remembered that; he also admitted that I had seen him concerning the claim and asked him to send the claim to the receiver, but he denied that I had told him concerning the transfers of the property to the receivers; he also denied that he knew of any ancillary receiver being appointed [110] or not appointed by this Court; I told him he certainly knew that the matter was pending in this court, that he had spoken to Judge Winn pertaining to the receiver and he knew about that matter, and I felt that he was not doing the right thing. I was very vigorous in my conversation with Mr. Robertson at that time, and I think Mr. Robertson will remember it.

Q. Is that the last conversation you had since that time?

A. We have had several conversations since that time—Mr. Robertson and I have been very good friends since then, and our conversations have al-

(Testimony of N. L. Burton.)

ways been pleasant.

Judge WINN.—That is all.

Cross-examination.

(By Judge GUNNISON.)

Q. When, Mr. Burton, was your firm first connected with the Pacific Coast & Norway Packing Company?

A. Several years, Judge Gunnison.

Q. Counsel has asked you with reference to the claim on which this defendant McDonald brought the action—what was that claim?

A. That was a claim of McDonald against the Pacific Coast & Norway Packing Company for some logs which he had furnished to the Pacific Coast & Norway Packing Company.

Q. And for which the Pacific Coast & Norway Packing Company had given him two notes?

A. Yes, sir.

Q. Those notes were the matters on which Mr. Robertson came to see you on the first occasion that you referred to, was it not? A. No, sir.

Q. Mr. Robertson didn't go to see you in your office in reference to those notes?

A. The first time Mr. Robertson came to see me about those notes was quite a while prior to that, Judge Gunnison. [111]

Q. He notified you that one would be due around the latter part of October, did he not? A. Yes, sir.

Q. The 26th of October? A. Yes.

Q. What was the total amount of those notes?

A. Seven hundred and some dollars, I believe.

(Testimony of N. L. Burton.)

Q. Each was \$700? A. Yes, each note.

Q. And these were notes which the company had given the defendant McDonald in settlement of his claim?

A. Prior to the appointment of the receiver.

Q. In order to obviate an attachment suit that had then been started, wasn't it?

A. I don't know whether he commenced an attachment suit—he commenced a suit.

Q. He commenced a suit on that claim originally?

A. Yes.

Q. And the company settled it for these notes, didn't it? A. Yes, sir.

Q. And then they didn't pay the notes?

A. It didn't pay the notes; it went into the hands of a receiver.

Q. Where were the logs cut that were the basis of that, do you know?

Judge WINN.—I object to that question as incompetent, irrelevant and immaterial, and not proper cross-examination.

The COURT.—Objection sustained.

Judge GUNNISON.—Exception.

Q. This first conversation you had toward the end of October, Mr. Burton, what date was that?

A. I couldn't tell you the exact date, Judge Gunnison.

Q. Was it before the 26th of October? [112]

A. I can just fix the date in this way, that Mr. Smith was up here on this ancillary receiver matter the end of October, and it was following the Sunday

(Testimony of N. L. Burton.)

that he went away from here, which was towards the end of October.

Q. How many days after that Sunday was this conversation?

A. It was either the day after the first conversation, or two days afterwards; I am not sure whether it was the first or second day.

Q. That you had the conversation?

A. The first conversation; yes, sir.

Q. That took place in your office?

A. In my office. I might state, Judge Gunnison, that on the Monday—my impression is that it was Monday, I went to see Mr. Robertson and he wasn't in the office, and I then intended going in later on in the day, but I didn't do so, and it was the next day he came in my office and I took it up with him.

Q. What time of day was it, do you remember?

A. I am not sure—I couldn't tell the time; I think it was in the morning between 11 and 12. I am not sure about that, and I don't want to state that.

Q. This conversation was held in your private office? A. Yes, sir.

Q. At that time you stated to him that no receiver for the company in Alaska had been appointed, did you?

A. Yes; I stated to him at that time that Mr. Smith had abandoned his idea of getting a receiver appointed, and I told him some things concerning that matter which I will not repeat now. The idea was to convey the property by deed—that that was the better way and would save expense—I went through

(Testimony of N. L. Burton.)

the matter pretty thoroughly with Mr. Robertson at that time—that it would be better for all the claimants.

Q. Had the deeds passed at that time? [113]

A. That I don't know, but I believe so; I am not sure about that, and I would not want to answer that question.

Q. Did you tell Mr. Robertson that the deed had passed?

A. I am not sure about that. I said the proposition was to prepare deeds—that Mr. Smith was going back to have deeds prepared, conveying the property to the receivers.

Q. But you didn't tell Mr. Robertson there had been deeds executed or passed, did you?

A. No, I don't think so.

Q. You didn't tell him that he might rest assured that Mr. McDonald would be paid dollar for dollar, what was owing him? A. I did.

Q. Was that the first time you told Mr. Robertson that, with reference to this claim?

A. It might not have been.

Q. You had told him that several other times with reference to it, hadn't you?

A. I won't say several times, but I told him that before.

Q. That was one of the considerations for the execution of those notes, wasn't it?

A. I don't know what the state of his mind was in making those notes.

Q. And you told him to send the claim of Mr.

(Testimony of N. L. Burton.)

McDonald to the receivers on this first occasion, did you?

A. I am quite sure I did on the first occasion; if I didn't on the first occasion, as I testified before, it was very shortly afterwards.

Q. I am just trying to find out what you said with reference to it. Now, I understand that you are unable now to state what Mr. Robertson said to you in reply.

A. I am not able to say that he said yes or no, whether his client consented, or that he consented on behalf of his [114] client, but I do know that his entire manner and conduct led me to believe that it was agreeable; the fact that he asked for the address of the receivers for the purpose of sending his claim a day or two afterwards led me to believe that it was agreeable to him.

Q. Had both of these notes matured at that time?

A. They had matured.

Q. Both had?

A. They had matured, and it was five months afterwards he brought his suit.

Q. In October? A. Yes.

Q. Both notes had matured in October?

A. I am not very sure about that, but I am fairly sure they had; I think they had.

Q. I am not trying to trap you on the thing—I don't think they had; I think you will find one of them had not matured.

A. It was very shortly after they matured—very shortly after.

(Testimony of N. L. Burton.)

Q. You say now you were led by Mr. Robertson's actions to believe that he acquiesced in your proposition to send the claim to the receivers?

A. I certainly did, and so stated to Judge Winn that Mr. Robertson was agreeable to it.

Judge GUNNISON.—We move to strike what counsel said to Judge Winn.

The COURT.—Yes, that may be stricken.

Q. What were the things that led you to believe that Mr. Robertson acquiesced in this, Mr. Burton?

A. Well, a great many things. For instance, if you came into my office—his talk, his manner, he listened to all my conversation—listened to me all the way through; I told him about this plan, about this scheme, about these deeds, and it seemed to be perfectly agreeable to him. [115]

Q. What do you mean by seemed to be?

A. A day or two after that conversation—

Q. Wait a minute, please. What do you mean by the remark seemed to be?

A. His whole demeanor—his whole attitude. You can consent, Judge Gunnison, to a thing without saying yes or no; you can show your feeling in the matter of consent by your conduct, and sometimes it is stronger, probably, than saying yes.

Q. So your notion about that is that he, by his conduct, agreed to send the claims to the receiver, is that it?

A. No, sir; he absolutely told me he would send the claims to the receiver.

Q. He did—on this occasion?

(Testimony of N. L. Burton.)

A. Two or three days after that occasion.

Q. Confine yourself to this occasion.

A. As I told you before, whether this claim was mentioned on that particular occasion or not, I don't know, but I am quite sure I did mention it. These claims were mentioned to Mr. Robertson not once, not twice, but several times. Whether I mentioned it at the time I mentioned the transfer or not, I am not sure, but if I didn't do so, I did within a very few days thereafter.

Q. I thought you said that was the first time, two days after that Sunday was the first time that Mr. Robertson asked you for the receivers' address?

A. No, sir; I didn't so state.

Q. You didn't so state?

A. I think I stated it was either a day or two after the first conversation that he asked for the address.

Q. I misunderstood you.

A. I think that is my testimony. [116]

Q. Then Mr. Robertson said nothing on that particular occasion?

A. Oh, yes; he talked; I couldn't say he said yes or no, but his talk, his conversation, his conduct and his manner led me to believe absolutely that he consented.

Q. But you have no recollection as to what he said?

A. No, I couldn't say that he said "I consent" or "yes."

Q. Merely an impression that you had from his conversation and demeanor that he was going to send the claims to the receivers?

(Testimony of N. L. Burton.)

A. The first conversation?

Q. Yes, sir; I haven't talked about any other.

A. Well, as I have told you, Judge Gunnison, I am not absolutely certain in that first conversation we mentioned about the claims, but I am absolutely certain the purpose of my first conversation was to see Mr. Robertson to express to him that this Court had not appointed an ancillary receiver, that that had been abandoned; that the purpose of the company was to deed the property to the receivers; whether I mentioned that he send the claims on that occasion I don't know, but I did in a few days' time.

Q. And whether at that time he asked you for the address of the receivers you don't know?

A. No, I do not.

Q. Now, that is all you remember about the first conversation, is it?

A. That is all I remember of the first conversation.

Q. When was the second conversation?

A. Shortly afterwards.

Q. How shortly? A. Within a few days.

Q. In what month?

A. It may have been in November, but if it was it was in the very first part of November. [117]

Q. And this second conversation you had, where did you have it?

A. The second conversation was in Mr. Robertson's office.

Q. You and he were there alone, as far as you remember?

A. As far as I remember we were alone. That sec-

(Testimony of N. L. Burton.)

ond conversation is when he took the names down on a piece of paper.

Q. This is the first time he took the names down, is it?

A. He took the names down on a piece of paper that second conversation—I think it was the second conversation—it may be the third one. As I mentioned before, I talked about this proposition with Mr. Robertson several times.

Q. You stated in your direct examination that he took down the names three times—the last time you had to go back to your office to get the names for him.

A. I think you are mistaken about that.

Q. That is what my notes show.

A. He took it down twice.

Q. The second time you went back to your own office to get the names for him?

A. Yes, sir; I went to my office to get the address, and this was prior to the attachment.

Q. The attachment suit. Now, on this second occasion, a few days after the first one in Mr. Robertson's office, what was said to Mr. Robertson?

A. I asked him to send the claims to the receivers; that we were sending our claims to the receivers, and asked him to send his if he had not done so; he asked me for the address of the receivers and put it on a piece of paper.

Q. This is the first time he asked you?

A. I think it was the first time, Judge Gunnison; I wouldn't swear to that; he put it on a piece of

(Testimony of N. L. Burton.)

paper on his desk. The next time I asked him about his claims he told me he mislaid that paper—he admitted he got the address, but said he had mislaid the paper. [118]

Q. You testified on direct examination that on this occasion there was nothing said about the property having been actually transferred?

A. No, sir; I don't believe there was. I was then satisfied in my own mind that he consented to the transfer, and it was only a matter of getting his claim in to the receivers.

Q. So you didn't say anything about the property having been transferred?

A. I don't believe I did; there was no occasion to.

Q. Did you then know it had been transferred?

A. In reference to the transfer—if you will pardon me, Mr. Smith telegraphed from Juneau to Seattle while he was here concerning the transfer—the preparation of those deeds and the order of the Court, and that was telegraphed to Seattle. I had in my mind that the deed was in the course of preparation or had been prepared, or would be prepared, in view of that telegram. The actual execution of those deeds I didn't know until the deeds were received here, or we received a letter from Smith saying they had been executed—I didn't know it before.

Q. When did you receive them here, Mr. Burton?

A. The deeds came with the deposition, and I had a copy sent during this case.

Q. It was after the commencement of this suit?

A. It was after the commencement of the McDonald action, anyway.

(Testimony of N. L. Burton.)

Q. That is, it was after the commencement of this action?

A. That is when I first saw the deeds—saw that they had been executed.

Q. When did you have information they had been executed? A. I couldn't tell you that.

Q. You didn't have it at the time of the second conversation with Mr. Robertson?

A. I didn't have any more knowledge than I did at the first conversation; [119] I knew they were either prepared or would be prepared.

Q. You knew that was the plan?

A. I knew that was the plan.

Q. And that was as far as your knowledge went?

A. In fact I stated to Mr. Robertson that that was the plan.

Q. That was the statement you made to him on the first occasion, but not on the second?

A. On the second I am not sure whether I mentioned the deeds or not.

Q. Later in the month of November, you had another conversation?

A. I think I did, during the latter part of November.

Q. What did you say to Mr. Robertson then?

A. It was principally about the claims; I think I asked him to send his claim in.

Q. Where was that conversation held?

A. Well, I couldn't give you the place where these conversations were concerning the claims, because I had more than one—I had several. I met him on the

(Testimony of N. L. Burton.)

stairway, I think, one day and told him about those claims, and he told me he had been so busy he hadn't sent them, leading me to believe that he was going to send the claims, but that he had been too busy.

Q. What was it he said that led you to believe—

A. He told me he would attend to the matter—that he had been busy and hadn't had time to attend to the matter.

Q. That is what he said?

A. Words to that effect—I cannot give the exact words.

Q. Did you, in this conversation, in November, tell him anything about the conveyances or bills of sale?

A. I don't remember that I did.

Q. Now, you had another conversation in December?

A. I am quite sure I did—probably more than one; I had at least one. [120]

Q. In your direct examination you said you had a conversation in December or early in January.

A. I did.

Q. Now, which? A. I am not sure.

Q. One or the other—was it before or after the suit was commenced?

A. It was before this suit was commenced.

Q. I mean the attachment suit as distinguished from the replevin suit.

A. Absolutely all these conversations were before the suits were commenced except the conversation I had after the attachment suit was commenced—I got a telegram from Petersburg that the boat was

(Testimony of N. L. Burton.)

attached, and I immediately saw Mr. Robertson and charged him with bad faith.

Q. This conversation you had in December or early in January was the result of a letter from your chief counsel in Seattle?

A. Result of a letter or telegram.

Q. That the McDonald claims had not been filed, and you went into Mr. Robertson's office then to see him, and this conversation occurred?

A. That was prior to the attachment?

Q. Yes—this was in December or January?

A. Yes; that was in Mr. Robertson's office; I remember that distinctly; I haven't any doubt about that at all; I am very sure about that.

Q. And that was another time Mr. Roberston couldn't remember the receivers' address, and you went back to your office and got the address?

A. Yes, sir; and Mr. Robertson said, "I will put it down in a book so I won't lose it."

Q. Was there anything said there that he was going to send the [121] claims to the receivers—or the claim?

A. He asked me for the address for the purpose of sending the claim to the receiver. If he was getting the address for the purpose of deceiving me, and making me think he was going to send that claim to the receiver, that is certainly the worst kind of deception. What else could he want the address for?

Q. Well, our firm were the attorneys for a creditor of that concern, weren't they? A. Yes, sir.

Q. Is it your idea that he merely asked for the

(Testimony of N. L. Burton.)

address of those receivers or of Mr. Smith,—did he ask for the address of the receivers or Smith?

A. I went into Mr. Robertson's office and gave him the address of the receivers for the express purpose of sending his claims, and I said to him—

Q. Did you give him Smith's address, or Schoenwald's? A. The receiver, Schoenwald.

Q. What was it?

A. I don't remember, but I think it was in the Smith Building; I am not sure about that.

Q. Not even sure about that now? .

A. Another thing—I remember telling Mr. Robertson at that time that I had had that address several times but had forgotten it, and I went into the office and got the address; and I think Mr. Roberston remembers all that, too.

Q. Was that before or after Christmas, do you remember?

A. No, I know it was before any suit was brought.

Q. Are you able to fix the time when you received the letter or telegram from Mr. Smith that the claim of McDonald had not been filed?

A. I can fix the date of that telegram approximately, that Smith sent asking why Roberston had not sent his claim—something about the attachment had been filed, and what was [122] the matter; that there had been an understanding that the claim was to be filed.

Q. What was the date?

A. That was sometime in January.

Q. In January? A. I think so.

(Testimony of N. L. Burton.)

Q. Is that the telegram that induced you to go in and see Mr. Robertson on this last occasion?

A. No; that was the telegram that caused me to go and see Mr. Robertson and charge him with bad faith.

Q. That was after the attachment? A. Yes, sir.

Q. On this occasion, late in December or early in January, did you tell Mr. Robertson the property had been transferred?

A. I don't remember; I don't think I did; I will say I didn't.

Q. The principal thing you were after, then, was to know why he had not sent his claim to the receiver, was it?

A. That was the principal thing I was after at that time, knowing, as I had reason to believe, that he knew that the transfer had been made of the property to the receiver.

Q. What do you mean by that, Mr. Burton? I am asking for my own information.

A. In the first place, the thing was to see Mr. Robertson,—acting on the instructions of Mr. Smith, to see your firm—Mr. Robertson was mentioned because he had been attending to the matter, and ask Mr. Robertson's consent to the transfer of this property to the receiver.

Q. You mean the Alaska property?

A. Yes, the Alaska property. At that time Mr. Smith explained to me—and this was the purpose of seeing Mr. Robertson—that he wanted to have all the creditors in harmony—in perfect harmony;

(Testimony of N. L. Burton.)

the big creditors in Seattle had consented and [123] were in harmony and consented to a receiver down there; and a receiver was to be appointed up here, but other matters coming up, he abandoned that receivership and decided to have those deeds executed and the purpose of seeing Mr. Robertson at that time was to get him, on behalf of Mr. McDonald, to consent to that transfer, realizing that possibly if he didn't consent to that transfer that there might be some trouble; and so I had that expressly in mind in trying to keep all the creditors in harmony with that situation; that was what I had in mind when I saw Mr. Robertson, so my purpose on the first occasion was to get his consent to the transfer.

Q. Did you get it?

A. After I had got what I felt to be his consent, or his client's—his conduct at that particular time—the whole conversation led me to believe he did consent, and I felt absolutely sure he did consent. After that was done I felt there was no reason to take the matter of transfer up with him again; the thing was to get the claim down to the receiver.

Q. Did you present to him at any time any written instrument asking for the consent, either of our firm or McDonald, to the transfer to the receiver?

A. No, sir.

Q. Did you ever show him a copy of any conveyance? A. I did not.

(Testimony of N. L. Burton.)

Judge GUNNISON.—That is all.

WITNESS EXCUSED.

(Whereupon court adjourned until 2 o'clock P. M.)

[124]

AFTERNOON SESSION.

December 21, 1915, 2 P. M.

Judge WINN.—Mr. Robertson, will you admit in this suit that we put up a bond with the Marshal, and that the boat has been turned over to the plaintiffs in the case?

Mr. ROBERTSON.—Yes; that is admitted in the pleadings.

The COURT.—And is now in the jurisdiction of the court.

Judge WINN.—And has been in the jurisdiction of the court at all times.

Judge WINN.—We will now read the deposition of E. Schoenwald.

(Whereupon said deposition was read as follows:)

Mr. ROBERTSON.—I understand that all the objections we made to the interrogatories of Mr. Smith are allowed to go to the interrogatories propounded to Mr. Schoenwald.

The COURT.—Let the record show that all the objections to the questions are overruled.

Deposition of Ernest Schoenwald.

Int. 1. Please state your name, residence and occupation.

A. My name is Ernest Schoenwald. I reside in Seattle, Washington. I am a receiver of Pacific Coast & Norway Packing Company and have been

(Deposition of Ernest Schoenwald.)

since the receivership was started in the middle of September, 1914.

Int. 2. State whether you are attorney for the above named E. Schoenwald and S. T. Hills as receivers of the Pacific Coast & Norway Packing Company, and if so how long you have been such attorney?

(No answer to this question.)

Int. 3. State whether you were attorney for said Pacific Coast & Norway Packing Company prior to being attorney for the receivers, how long you continued as attorney for such corporation, and what, if any, part you took as such attorney for said corporation in the suit brought against it for the appointment of receivers, and in which such receivers were appointed. [125]

A. My only connection with the Pacific Coast & Norway Packing Company before I was appointed receiver was that for nearly two months I had been acting as a director and as manager of the company. The former manager was removed in July, 1914. I had no interest in the company but at the suggestion of large creditors and stockholders I had been investigating its affairs in co-operation with the majority of the board of directors and they got me to act as manager, I taking just enough stock to qualify me as a member of the board. I really was acting more as a trustee for the creditors to straighten matters out.

Int. 4. State whether the said corporation has since employed any other attorney in the receivership matters.

(Deposition of Ernest Schoenwald.)

A. I believe the Pacific Coast & Norway Packing Company has not employed any other lawyer in the receivership matters but Winfield R. Smith at the outset. He ceased to act as the company's attorney before he became attorney for the receivers.

Int. 5. Please state whether or not you are familiar with and have personal knowledge of the reasons why receivers were appointed for said Pacific Coast & Norway Packing Company.

A. Yes—I know very well why the receivers were appointed.

Int. 6. If so, state such reasons in full.

A. Many things combined, a number of which were sudden and unexpected. There were very few poor fish in one big lot resulting from disobedience of orders at the cannery one afternoon and big stories got out giving the idea that the entire large lot of fish would not pass inspection. This was followed immediately by suit by Duff & Sons at Pittsburg, and in that suit both the company's bank account and all the pack stored at Seattle awaiting sale and shipment were tied up. Other creditors then threatened immediate suit. These [126] things came just at a time when a large number of notes were falling due and defeated the arrangements which the company had made to care for these. There was nothing left then but receivership to protect all the creditors alike and straighten out the company's affairs as quickly as possible.

Int. 7. Were any other receivers appointed for said corporations?

(Deposition of Ernest Schoenwald.)

A. A few days after that, S. T. Hills was on application to the court appointed an advisory receiver. There were no other receivers appointed anywhere.

Int. 8. State if you know what disposition was made of the property, real and personal, of the Pacific Coast & Norway Packing Company upon the appointment and qualification of Mr. Schoenwald as receiver, and state expressly as to the property and assets located in Alaska, including the gasoline boat "Bernice." What further, if anything, was done with such property and assets upon the appointment and qualification of Mr. Hills as coreceiver?

A. I took charge of all the property. By telegraphic direction from the company all the property at Alaska, including the "Bernice" was immediately turned over to the receivers, and all operations from that time on were conducted by them. When Mr. Hills was appointed he simply shared in the possession with me.

Int. 9. State whether the said receivers have been conducting the business of the said Pacific Coast & Norway Packing Company in Alaska, and if so, when they, or Mr. Schoenwald, began to do so.

A. Yes—they have. I began to conduct it the next day after my appointment as receiver.

Int. 10. State whether the real and personal property belonging to said corporation in the Territory of Alaska, including the said gasoline boat "Bernice," was transferred by written [127] instruments delivered to the receivers, and if so, when, and attach hereto the said writing or writings, mark-

(Deposition of Ernest Schoenwald.)

ing them appropriately as exhibits constituting a part of your answer to this question.

A. Yes, all of the real and personal property in Alaska was transferred to the receivers by deed and bill of sale. I haven't these. They were in the possession of the receivers' attorney, Winfield R. Smith, and I believe are attached to his deposition in this case.

Int. 11. State if you know what was the occasion for the execution of these instruments and whether they were executed and delivered voluntarily by the Pacific Coast & Norway Packing Company.

A. It was first proposed to have the court in Alaska appoint the same receivers there and Mr. Smith went up to Juneau to attend to this matter, among others. Various legal questions arose and it seemed likely that there might be a different receiver or receivers appointed. The Washington receivers had petitioned the court, and I believe a hearing was had, but no decision was ever made. Everybody was anxious to have the affairs of the company managed as simply as possible, and especially to be all in one hands. It was of great importance to manage the company only from one point, and Seattle was the natural point for that. The action was entirely voluntary by the company for the benefit of all concerned.

Int. 12. What, if anything, did you have to do with the execution and delivery of said instruments, and state fully the circumstances and conditions surrounding and leading up to their execution?

(Deposition of Ernest Schoenwald.)

A. I have already largely answered this. After the matter was agreed upon, I appeared personally before the Superior Court at Seattle, being the court of the receivership, together with Mr. Kells, a lawyer in Mr. Smith's office, and Mr. Steberg, [128] the president of the company. We told the Court how matters stood and what we desired. The Court asked particularly whether the company desired this, and Mr. Steberg told him it did. We also told him that the committee of the creditors, and everybody interested, so far as could be determined, was in favor of the action as the natural, simple and economical thing to do. The Court then approved the arrangement, and the deed and bill of sale, which had already been drawn, were signed by the company through its president, and were delivered by Mr. Steberg to me.

Int. 13. State whether or not, if you know, the trustees and stockholders of the Pacific Coast & Norway Packing Company authorized or acquiesced in the execution and delivery of said instruments.

A. Yes, I do know that all the trustees (as I believe the directors are called here) and all the stockholders of the Pacific Coast & Norway Packing Company desired and approved giving the receivers title to the Alaska assets so as to save any separate receivership. I myself talked with all of the other directors, including a little later the one who lives in Minneapolis. The others all live in the general neighborhood of Seattle. Also I communicated at the time with the great majority of the stockholders. Later, when I was in Minneapolis, I conferred with the rest

(Deposition of Ernest Schoenwald.)

of them there. I think that I talked with all of the stockholders, unless, perhaps, a few small ones in Minneapolis, and even in their case I talked with persons who were speaking for them. We had informal meetings of the stockholders in different places.

Int. 14. State fully whether or not, if you know, the Superior Court of King County, being the court of the receivership, compelled the execution and delivery of the said instruments, or whether the same were executed voluntarily by the said Pacific Coast & Norway Packing Company without compulsion.
[129]

A. I have already fully answered this—the Court simply approved the arrangement which had been made, after inquiring and being told, in my hearing, that the company, as well as the creditors' committee and the receivers, favored this.

Int. 15. If the said court did enter any order in the premises, please so state, and attach a certified copy of said order as a part of your answer to this question.

A. The court did enter an order but I have no copy of it. I believe one is already attached to Mr. Smith's deposition.

Int. 16. State, if you know, why and under what circumstances the said order was entered, and why the said written transfers were ordered, executed and delivered.

A. I have fully answered this question.

Int. 17. State whether there has been any active

(Deposition of Ernest Schoenwald.)

co-operation throughout the receivership between the receivers and creditors of the Pacific Coast & Norway Packing Company, and if so, state by and through whom the said creditors actively co-operated with said receivers.

A. Yes, there was throughout. Every important action has been approved by the creditors' committee, as well as by the Court.

Int. 18. If you have mentioned a creditors' committee, state when such committee was selected, how and by whom, of whom it consists, and why these persons were selected, if you know.

A. This committee was selected at a large meeting of the creditors held within a week after I was appointed receiver. It consists of representatives of the four largest unsecured creditors. They were chosen because of this fact. It consists of Mr. Pattullo, of Balfour-Guthrie & Company; Mr. Frank J. Speckert, of Western Hardware & Metal Company; Mr. John McLean, Northwest Manager for the Standard Oil Company, and E. Morganstern, of Schwabacher Bros. Company.

Int. 19. State, if you know, what at that time was, and since has [130] been, the attitude of the creditors of Pacific Coast & Norway Packing Company towards the assets in Alaska, and especially towards the immediate delivery of the said assets to the receivers upon their appointment, and the retention of such assets since by the receivers, and towards the written transfers of the said assets hereinabove mentioned and set forth.

(Deposition of Ernest Schoenwald.)

A. As said, the creditors have all favored the transfer of the Alaska assets to the receivers. The transfer has never been questioned or objected to by anyone except Mr. D. N. McDonald, who is a defendant in this action, and he tried to get his claim paid in full.

Int. 20. State whether the conveyance of the assets of said Pacific Coast & Norway Packing Company unto said receivers, including the gasoline boat "Bernice," was made under and by virtue of any Washington Statute or under compulsion of law, or whether the deeds of conveyance were intended common-law deeds. Answer fully.

A. Not being a lawyer I can't answer this question.

Int. 21. Do you know, or can you set forth, any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this, your examination, or the matters in question in the cause? If yes, set forth the same fully and at large in your answer.

A. I might say that the tonnage of the "Bernice" is eleven tons.

Cross-interrogatories.

Cross-int. 1. In what court and in what State were E. Schoenwald and S. T. Hills appointed receivers for the Pacific Coast & Norway Packing Company?

A. I believe the court is the Superior Court at Seattle.

(Deposition of Ernest Schoenwald.)

Cross-int. 2. Was the gasoline boat "Bernice" in the State of Washington at any time during the period from September 15, 1914, to April 28, 1915?

[131] A. No.

Cross-int. 3. Was the gasoline boat "Bernice" at all times within the jurisdiction of the District Court of the First Division of the Territory of Alaska, during the period from September 15, 1914, to April 28, 1915? If your answer is in the negative, state the periods of time, giving dates, that said boat was outside the jurisdiction of said court.

A. The "Bernice" was at all times in Alaska, at or near Petersburg.

Cross-int. 4. Was the gasoline boat "Bernice," during the period from September 15, 1914, to February 8, 1915, licensed under documents issued by the officials of the United States Customs District for Alaska? A. I have already answered this.

Judge WINN.—I object to that. It is rebuttal testimony, if it is necessary at all.

The COURT.—I think that should not go in.

Judge GUNNISON.—Exception.

Cross-int. 5. Was any bill of sale or other document conveying the gasoline boat "Bernice" from the Pacific Coast & Norway Packing Company to E. Schoenwald and S. T. Hills, as receivers, or to either of them as receivers, filed for record or recorded with the United States Customs officials for the Customs District of Alaska, at any time prior to February 10, 1915? If your answer is in the affirmative, state the date that said bill of sale or other

(Deposition of Ernest Schoenwald.)

document was recorded with said officials.

A. No, at no time.

Cross-int. 6. Have E. Schoenwald and S. T. Hills, or either of them, ever been appointed receivers of the Pacific Coast & Norway Packing Company, by any court of the District or Territory of Alaska?
[132]

A. No, the Alaska court has not appointed any receivers.

Cross-int. 7. Was the conveyance or transfer of the gasoline boat "Bernice" to Schoenwald and Hills, or to either of them, made prior to the appointment of those gentlemen as receivers by the Superior Court of King County, State of Washington?

A. No.

Cross-int. 8. Did Honorable Everett Smith, Judge of the Superior Court of King County, for the State of Washington, on or about October 26, 1914, make an order directing that the Pacific Coast & Norway Packing Company transfer all of its personal assets in Alaska to Schoenwald and Hills, as receivers?

A. Yes.

Cross-int. 9. Was the bill of sale or conveyance of the gasoline boat "Bernice" to Schoenwald and Hills as receivers made in pursuance to the order of the Superior Court of King County, entered by that court on or about October 26, 1914?

A. This has already been covered in my testimony.

Cross-int. 10. Was a meeting of the board of directors or trustees of the Pacific Coast & Norway Packing Company held for the purpose of authoriz-

(Deposition of Ernest Schoenwald.)

ing and acquiescing in the execution and delivery of the instrument conveying the gasoline launch "Bernice" to Schoenwald and Hills as receivers?

A. There has never been a meeting of the board of directors at all since the receivers were appointed.

(Questions 11, 12, 13, 14 and 15 not read, as they refer to above question regarding meeting.)

Cross-int. 16. Was a meeting of the stockholders of the Pacific Coast & Norway Packing Company held for the purpose of authorizing and acquiescing in the execution and delivery of the instrument conveying the gasoline launch "Bernice" to Schoenwald and Hills as receivers? [133]

A. Likewise no meeting of the stockholders has been called and no formal meeting held since the annual meeting before the receivership.

(Questions 17, 18, 19, 20, 21, 22 and 23 not read, as they refer to question No. 16.)

Cross-int. 24. Did you, as attorney for said Schoenwald and Hills, as receivers, cause to be made and entered the order of the Superior Court of King County, dated on or about October 26, 1914, which order is referred to in cross-interrogatory No. 8?

A. I believe this has been fully answered.

(Cross-interrogatory 25 not read.)

Cross-int. 26. Has a committee of Alaskan creditors been selected and appointed in Alaska to co-operate with Schoenwald and Hills as receivers?

Judge GUNNISON.—We object to that answer, as it is not responsive.

The COURT.—Objection sustained.

(Deposition of Ernest Schoenwald.)

(Whereupon the entire answer to cross-interrogatory No. 26 was stricken and not read.)

(Cross-interrogatory No. 27 not read.)

Cross-int. 28. State the names of the creditors of said Pacific Coast & Norway Packing Company who live in Alaska.

(No answer to above question in deposition.)

Judge WINN.—The answer to No. 26 is an answer to No. 28.

The COURT.—If there is no answer in the deposition I don't see how there is anything for the Court to rule on.

Judge WINN.—The answer to No. 26 does answer it,—No. 28, and I insist that that answer go in.

The COURT.—I cannot go through a deposition to find out whether a question has been answered in some other answer.

Cross-int. 29. State the dividend that has been paid to Alaskan creditors by Schoenwald and Hills as receivers, up to and including October 12, 1915.
[134]

A. No dividend has ben paid by the receivers.

Cross-int. 30. Were Schoenwald and Hills appointed receivers upon a petition of one Roy W. Nevin, in cause No. 103,639, of the Superior Court of King County, State of Washington?

A. The plaintiff in the receivership case is Roy W. Nevin.

Cross-int. 31. Was Roy W. Nevin a creditor of the Pacific Coast & Norway Packing Company at the time of the filing of his petition in cause No. 103,639

(Deposition of Ernest Schoenwald.)

of the Superior Court of King County, State of Washington? A. Yes, Nevin was a creditor.

Cross-int. 32. Was a conveyance of the gasoline boat "Bernice" to Schoenwald and Hills as receivers, made after Honorable Robert W. Jennings, Judge of the District Court for the First Division of Alaska, had refused to grant the petition of Roy W. Nevin for the appointment of an ancillary receiver of the Pacific Coast & Norway Packing Company in the Territory of Alaska?

A. Nevin did not petition in Alaska. The receivers petitioned there to have their authority extended over Alaska too. I have already told what I know about this.

Cross-int. 33. Was Roy W. Nevin a creditor of the Pacific Coast & Norway Packing Company at the time of the filing of his petition in the District Court of Alaska, for the appointment of a receiver for said corporation?

(No answer.)

Cross-int. 34. Of what State has E. Schoenwald been a citizen and resident since September 15, 1914?

A. Washington.

Cross-int. 35. Of what State has S. T. Hills been a citizen and resident since September 15, 1914?

A. Washington.

Cross-int. 36. Was the Pacific Coast & Norway Packing Company insolvent at the time of the appointment of Schoenwald and [135] Hills as receivers, of such, by the Superior Court of King County, State of Washington?

(Deposition of Ernest Schoenwald.)

A. The company could not meet its obligations as these fell due. The assets appeared to be largely in excess of the liabilities, and although the book values were too high, it appeared that the assets were quite a good deal in excess of the debts.

Cross-int. 37. Was the conveyance to Schoenwald and Hills as receivers, of the gasoline boat "Bernice," as well as the other personal assets in Alaska of the Pacific Coast & Norway Packing Company, necessary to the successful conduct of the receivership by said Schoenwald and Hills as receivers?

A. No, it was not absolutely necessary but it was the natural and common sense thing to do and enabled the business to be handled and the assets to be realized on more cheaply and quickly.

Cross-int. 38. Are all of your answers to the direct and cross-interrogatories propounded to you in this deposition based upon your personal and actual knowledge? If your answer to this question is in the negative, state which answers are not, indicating by the particular number of each direct and cross-interrogatory to which your answers are not based upon personal and actual knowledge.

A. Yes, my answers are based on actual personal knowledge, except in so far as I have touched on questions of law.

Cross-int. 39. Are you an impartial witness in view of the fact that you are one of the attorneys for the plaintiff in the case in which this deposition is being taken?

A. I have no interest in the company or in the out-

(Deposition of Ernest Schoenwald.)

come except my duty as receiver and desire to get the very best results possible for all the creditors. My connection does not make any difference whatever with my testimony. [136]

Cross-int. 40. Have you dictated or outlined the plan of procedure under which Schoenwald and Hills, as receivers, are acting in endeavoring to obtain control of the assets of the Pacific Coast & Norway Packing Company, which are located in Alaska.

(No answer.)

Cross-int. 41. Is it not to your personal interest to have the assets in Alaska, of the Pacific Coast & Norway Packing Company administered by the courts of Washington?

A. I have just answered as to this.

Mr. ROBERTSON.—I would like, if the Court please, to show on the record our objections to these various answers of Schoenwald's, which are made up and filed the same as we did to the Smith deposition.

The COURT.—You had an opportunity to object as the deposition was being read—I didn't hear any objection except one, and that one I sustained. For the sake of the record, you can make all the objections you wish, as not being responsive, and the record may show they are all overruled except in so far as the answers as read sustain the objections.

Mr. ROBERTSON.—We also would like to make a motion, which motion should apply separately to each of these various depositions, that the whole of each deposition be stricken on the ground that the deponents giving the depositions have failed to an-

(Deposition of Ernest Schoenwald.)

swer cross-interrogatories.

The COURT.—That motion comes too late—you should have moved to suppress the deposition, and you should have done that before the trial. You cannot have the deposition read, and then at the last minute make that objection. The motion is denied.

Mr. ROBERTSON.—Exception.

Judge WINN.—Before the case is closed, we would like to offer [137] in evidence the Schoenwald deposition.

The COURT.—The record may show the Schoenwald deposition was offered.

Judge GUNNISON.—And the same objections were made to that.

The COURT.—The motion in so far as the Schoenwald deposition is concerned is in time, because that has just been read; but whether you are in time or not, the motion will be overruled so far as the admission of the depositions as a whole is concerned.

Mr. ROBERTSON.—I want the record to show that we made the same objections to all these questions which your Honor has now permitted to go in on this deposition, as when they were first originally interposed—the objections to the questions which the Court has now permitted to be read.

The COURT.—The record may so show.

Judge WINN.—That is our case.

Judge GUNNISON.—Defendants move to strike those parts of the depositions of Winfield R. Smith, L. C. Kells, C. O. Steberg and E. Schoenwald which refer to any action or wish on the part of individual

(Deposition of Ernest Schoenwald.)

directors or trustees, on the ground that the individual action or wish or opinion of stockholders or directors of a corporation are not the action of the corporation and have no legal effect for or on behalf of the corporation itself.

The COURT.—Motion denied.

(The foregoing deposition is the deposition of E. Schoenwald, excepting only those portions thereof which were stricken by the Court, and plaintiffs allowed an exception. The answers, in which is contained the portion so stricken, are as follows,—the stricken portions appearing in parenthesis.)

Ans. to direct interrogatory No. 8. I took charge of all the property. (That in Washington by the Court's order, and that [138] in Alaska by the voluntary action of the company.) By telegraphic direction from the company all the property at Alaska, including the "Bernice," was immediately turned over to the receivers, and all operations from that time on were conducted by them. When Mr. Hills was appointed he simply shared in the possession with me.

Ans. to direct interrogatory No. 11. It was first proposed to have the Court in Alaska appoint the same receivers there, and Mr. Smith went up to Juneau to attend to this matter among others. Various legal questions arose and it seemed likely that there might be a different receiver or receivers appointed. The Washington receivers had petitioned the Court and I believe a hearing was had, but no decision was ever made. Everybody was anxious

(Deposition of Ernest Schoenwald.)

to have the affairs of the company managed as simply as possible, and especially to be all in one hands. It was of great importance to manage the company only from one point and Seattle was the natural point for that. (Its business had always been directed from there. Therefore it was decided at a conference between the receivers, their attorney, the creditors' committee and the company through its president, Mr. Steberg, who was in touch with the other directors, that the title to the Alaska assets would be transferred to the two receivers.) The action was entirely voluntary by the company for the benefit of all concerned.

Ans. to direct interrogatory No. 19. As said, the creditors have all favored the transfer of the Alaska assets to the receivers. The transfer has never been questioned or objected to by anyone except Mr. D. N. McDonald, who is a defendant in this action, and he tried to get his claim paid in full (although he had no better right than the other creditors.)

Ans. to direct interrogatory No. 20. Not being a lawyer, I can't [139] answer this question (except to say that I never heard any suggestion of a law, and that the court in Washington merely carried out the arrangement and request of the company, the creditors' committee and the receivers by approving the taking of title by the receivers.)

Ans. to direct interrogatory No. 21. I might say that the tonnage of the "Bernice" is eleven tons (and I was therefore advised that there was no need of any bill of sale being recorded in the custom-house.

(Deposition of Ernest Schoenwald.)

These boats, including the "Bernice," had been laid up for the winter before the title was transferred to the receivers late in October, and the boats were not used again until early the following spring this year. After transfer to us of the title in October I directed our custom's broker to procure the necessary change in the boat's papers. The boats hail from Seattle. I supposed accordingly that the new certificate and license had been issued in the name of the receivers as owners, but I found afterwards that the broker had misunderstood and obtained the papers in the name of the Pacific Coast & Norway Packing Company. I think I myself contributed to the mistake by signing in a more or less perfunctory manner some application or other paper submitted to me in completed form by the custom's broker and which I understood was prepared in accordance with my directions, but I did not realize doing this until my attention was drawn to the matter afterwards. What I meant was to have the papers issued at once in the name of the receivers, we being the owners. When I discovered the mistake I at once had this corrected and in March the papers were issued accordingly to the receivers as owners. As I have said, we had actually been the owners since late October, 1914, and we had been in actual possession of the boats at all times since the middle of September, 1914. Subsequent to the transfer to us in [140] late October there was no transfer of the "Bernice" made and no change whatever made in the records except this correction in March of the name of the person

(Deposition of Ernest Schoenwald.)
to whom the license was issued.)

Ans. to cross-interrogatory No. 26. (The creditors' committee which I have testified about was appointed and acting for all the creditors, as well those in Alaska as anywhere else. The creditors in Alaska, aside from the bank at Petersburg, were small.)

Judge GUNNISON.—We move to strike all of the testimony of Mr. Burton on the ground that there is nothing therein shown which brings to the notice of the defendant, or his counsel, any transfer of any of the property actually having been made. That even if notice thereof had been given to counsel, in the absence of evidence of the filing for record of the transfer in some public places of record—properly in the office of the Collector of Customs for the District of Alaska—such notification would not be binding upon the defendant, and therefore the testimony is incompetent, irrelevant and immaterial.

The COURT.—Motion denied.

Plaintiff rests.

Defendant rests. [141]

Mr. ROBERTSON.—Defendant at this time moves the Court for a nonsuit on the grounds: That the plaintiffs have failed to prove their case in chief; that the evidence discloses that the plaintiffs are suing only in the capacity of receivers, and that as receivers appointed by a court of another jurisdiction, out of Alaska; that there is no evidence in the case that the plaintiffs are assignees for the benefit of creditors; that there is an attempt to show that the plaintiffs are assignees by virtue of a conveyance

which the evidence shows is an invalid conveyance of the company, because there is no evidence in the record disclosing that this conveyance was ever made at the direction of the corporation acting as a corporate body; that the evidence of the plaintiffs has disclosed that McDonald is a resident of the Territory of Alaska and a local creditor; that all the transactions arising in the case arose within the jurisdiction of this court; that the property in controversy, the "Bernice," is an American licensed vessel and documented in the Customs District of Alaska, and was documented in the Customs District of Alaska at all times, both before and since the receivership, and after it was attached, and in fact until it was released; that the evidence discloses that there was no record of any conveyance of this vessel to these plaintiffs in either of their capacities ever placed on record in either the United States Customs-house of the District of Alaska, or in the Commissioner's Precinct of Wrangell, wherein Petersburg is located; that the said conveyance does not purport to be made for any consideration; that the plaintiffs by their testimony [142] have admitted that in the offices where such documents should appear of record, and do ordinarily appear of record—the place provided by law—that this boat stood in the name of the Pacific Coast & Norway Packing Company at all times prior to the suit and prior to the receivership, and during the receivership, and up until sometime after the attachment. That the plaintiffs, by the pleadings, admit the fact of an action instituted by the defendant McDonald, of the due levy of an at-

tachment in that case, and of the taking of the "Bernice" under that attachment, of the judgment of this Court, which judgment provided for the sale of said vessel. There is no evidence of any notice of any transfer. I will be frank to say that I do not, personally, like to comment on Mr. Burton's testimony, but my recollection of his testimony is at this time that he did not tell me of any transfer, but conceding what Mr. Burton said was true, for the sake of this motion, Mr. Burton never told me there was any conveyance made; at the most, all he told me was that there was a plan for such conveyance. There is no record of any transfer, and the evidence fails entirely to show any corporate act on the part of the Pacific Coast and Norway Packing Company; it simply shows that whatever acts or acquiescence was indulged in by the consent of the stockholders was not indulged in by them to be any corporate act for that purpose. It fails to show, furthermore, if the Court please, that there was any voluntary act on the part of the corporation; it shows that if there was any such conveyance made, it was made directly under the order of the Superior Court of King County over personal property, which it is conceded by the plaintiff's case, was not in the jurisdiction of that court, but has at all times been in the jurisdiction of this court; for a *long prior* to the receivership had been, and still is, in this jurisdiction. And, if the Court please, [143] the record seems to us to show that it is a deliberate attempt to get property into their hands and custody—property that is situated in Alaska—after they presented some proceedings to your Honor, which proceedings were never

fully consummated, or never fully decided for some reason we are not advised of at this time; and on the further grounds that the evidence now shows that the plaintiffs in this suit are not the real parties in interest; that if any party could be a party in interest in this suit as plaintiff it would have to be the Pacific Coast & Norway Packing Company itself; and furthermore, on the ground that the evidence fully shows at this time that the plaintiffs have no legal capacity and no right to sue in this court in such an action as this against a local Alaskan creditor of the corporation.

(Whereupon said motion was taken under advisement by the Court, and an adjournment had until 10 o'clock to-morrow morning.)

MORNING SESSION.

December 22, 1915, 10 A. M.

The COURT.—In the matter of the motion made yesterday, the motion for a nonsuit will, at the present time, be denied.

Judge GUNNISON.—Exception.

(Whereupon, after argument by counsel respecting production of books, telegrams, letters, etc., court adjourned until 2 P. M.)

AFTERNOON SESSION.

December 22, 1915, 2 P. M.

Judge GUNNISON.—We have decided not to offer any evidence, but to rest on our motion for a nonsuit.

The COURT.—All right.

Mr. ROBERTSON.—If the Court please, the de-

fendant at this time moves for a directed verdict in favor of defendants on the following grounds: [144]

There is no proof whatsoever of any damages in the sum of \$500, or any other amount.

That the plaintiffs have failed *in toto* to prove the material allegations of their complaint; that at this time the record shows that if the plaintiffs are receivers in any court they are receivers in a court of foreign jurisdiction, not in this jurisdiction; that the property in question is, and at all times has been, in the Territory of Alaska; that so far as any attempted assignment being made to the plaintiffs by the corporation, that it was not the act of the corporation, that it has never been ratified or in any way acquiesced in or consented to by the corporation; that such assignment is not a common law assignment; that if it is any assignment whatever, it is an assignment that is based purely upon the proceedings instituted in the receivership action in a court of foreign jurisdiction. That at this time the evidence clearly shows that the defendant McDonald is an Alaskan creditor of this concern; it further shows that the said McDonald recovered a judgment in this court in an action on transactions which originated in the jurisdiction of this court; that this court entered a judgment after attachment had been levied upon the vessel in controversy, directing the sale of that vessel to satisfy the demands of Mr. McDonald; that the plaintiffs, neither in the capacity of receivers nor in the capacity of assignees, have any legal right to sue in this court in an action of this nature, wherein the defendant is an Alaskan

creditor. That they have failed to prove any knowledge whatsoever on the part of the defendants of any alleged assignment; that the record shows by the undisputed testimony of the plaintiffs, that if any such assignment was made, there was no notice, either actual or constructive, in any manner ever conveyed to the defendants, or to any person representing the defendants, or [145] either of them.

That the evidence further shows that the plaintiffs are not the real parties in interest, and that neither one of them is the real party in interest; that they are without capacity to sue in this court in either capacity they set up in their complaint.

That the evidence does not show that the assignment is a voluntary assignment, or any assignment whatever; and if it can be held to be any assignment, it was not made for the benefit of all the creditors of said company; it is not a good and sufficient deed of conveyance; it is not *bona fide*; it is invalid, and it did not and could not convey any personal property in the District of Alaska to the plaintiffs; and that they have entirely failed to show any record of any such transfer being made in the Territory of Alaska; that they have failed to show that either of the plaintiffs are acting under authority of a court of competent jurisdiction.

It further shows, if the Court please, by the undisputed testimony, that after the alleged receivership of this concern for a period of something over 14 months, in the state of Washington, that at this time there have been no dividends, and it is not denied that there has been no dividend whatsoever,

paid, or any distribution of assets, showing, as we contend, the damage the defendant McDonald would necessarily be put to if their action was sustained.

Further, that any assignment which was made did not include the power boat "Bernice"; that on the contrary, whatever property they purport to claim under the assignment, so far as the "Bernice" is concerned, was under a separate instrument, which was made at the direction of the court where the receivers had been appointed in the real receiver-ship case. [146]

That there is no evidence to show that the defendants, or either of them, knew of the appointment of the receivers prior to the attachment, or that they knew of the assignment to the plaintiffs for the benefit of all the creditors, or any assignment whatever; fails to show that the plaintiffs had possession of the power boat "Bernice" in the capacity in which they sue, or any act by which they took that possession. And I here respectfully refer to our motion for a nonsuit, and incorporate within this motion all the grounds that we specifically referred to at the time of making our motion for a nonsuit.

Judge WINN.—We do not understand in a motion for a directed verdict it is necessary to go into the grounds specifically, unless it is to inform the Court what we rely upon. We therefore at this time request the court to direct a verdict in favor of the plaintiffs in this case, on the grounds and for the reasons that the uncontradicted evidence in the case would only support a verdict in favor of the plaintiffs, and would not support a verdict in favor of the

defendants. We, however, state in this motion that we have waived any claim to damages for the retention of the boat by the defendants, so far as that is concerned, and stated to the Court yesterday that we would offer no proof upon the question of the \$500 damages, which we claim for the retention of the boat, but we do claim that upon the uncontradicted evidence that has been before the Court, that at this time a verdict could only be sustained in favor of the plaintiffs in this case, and that no other verdict would stand under the law and the evidence, as it is before the Court at the present time.

The COURT.—Now, gentlemen, both of you having moved for an instructed verdict, it is equivalent to both of you saying you are willing that the jury should be discharged and that the Court should decide the matter, especially in a case of this kind, [147] where there is absolutely no question of fact for the jury to pass on one way or the other.

Mr. ROBERTSON.—If the Court please, the defendants are willing to agree to the suggestion of your Honor that the jury be discharged at this time, as we think it is purely a matter of law, excepting, of course, we do not wish to be understood as in any wise having waived our motion for a nonsuit.

The COURT.—Have you any objection to the Court discharging the jury and trying the case as if it had been originally submitted to the Court.

Mr. ROBERTSON.—We have no objection.

Judge WINN.—We have no objection, either.

The COURT.—The record may show that counsel for both sides are willing that the jury should be dis-

charged without a verdict, and that the matter be treated as a trial before the Court without a jury, and as such, be submitted to the Court for its determination on the pleadings and on the evidence.

(Whereupon the jury was discharged, and the matter taken under advisement by the Court.)

The exhibits introduced are as followed: [148]

Exhibit "A"—Complaint, Nevin vs. Pacific Coast & Norway Packing Co.

In the Superior Court of King County, Washington.

No. 103,639.

ROY W. NEVIN,

Plaintiff,

vs.

PACIFIC COAST & NORWAY PACKING COMPANY, a Corporation,

Defendant.

Comes now the plaintiff above-named by Arthur Schramm, Jr., its attorney, and complains of the defendant as follows:

I.

The defendant is and at all times hereinafter mentioned was a corporation organized under the laws of the state of Minnesota, with its principal place of business at Minneapolis, and authorized to do and doing business in the State of Washington and the Territory of Alaska, its chief business office being located in the city of Seattle.

II.

That the copartnership of C. E. Dickinson & Company of Seattle, Washington, during the year 1914,

issued to the defendant policies of insurance upon its boats, buildings and consignments of merchandise, and unpaid premiums upon said policies amount to the sum of twelve hundred and eighty-four dollars (\$1,284).

III.

No part of said premiums have been paid.

IV.

That prior to the commencement of this action the said C. E. Dickinson & Company assigned to the plaintiff, for valuable consideration its claim mentioned in paragraph II.

V.

The defendant corporation is financially embarrassed and [149] cannot meet its obligations as they mature. Suits have been begun against it and if its property is seized at forced sale sufficient cannot be realized to meet its obligations. Although defendant's assets now exceed its liabilities, said defendant is in imminent danger of insolvency.

WHEREFORE plaintiff prays for the appointment of a receiver of the property, assets and business of the defendant, to control and manage the same and to continue the business of said corporation for the benefit of all its creditors, and for judgment against said defendant in the amount of twelve hundred eighty-four dollars (\$1,284), with its costs and disbursements herein.

ARTHUR SCHRAMM, Jr.,
Attorney for Plaintiff.

State of Washington,
County of King,—ss.

Roy W. Nevin, being first duly sworn, on oath says :
I am the plaintiff in the above-entitled action. I
have read the foregoing complaint, know the contents
thereof and believe the same to be true.

R. W. NEVIN.

Subscribed and sworn to before me this September
15, 1914.

ARTHUR SCHRAMM, Jr.,
Notary Public in and for the State of Washington,
Residing at Seattle.

Filed in clerk's office Sept. 16, 1914. W. K. Sick-
els, Clerk. By F. W. Smith, Deputy.

Pltfs. Exhibit No. "A." Received in evidence
Dec. 20, 1915. In Cause No. 1264-A. J. W. Bell,
Clerk. [150]

**Exhibit "B"—Answer,—Nevin vs. Pacific Coast &
Norway Packing Co.**

In the Superior Court of King County, Washington.

ROY W. NEVIN,

Plaintiff,

vs.

PACIFIC COAST & NORWAY PACKING COM-
PANY, a Corporation,

Defendant.

Comes now the defendant by Winfield R. Smith,
its attorney, and answering the complaint herein al-
leges:

I.

Defendant admits indebtedness to said C. E. Dickinson & Co. on account of insurance premiums as alleged in paragraph II of the complaint, but has no accurate record of the amount of said indebtedness, and no knowledge or information sufficient to form a belief as to the truth of plaintiff's statement of said amount.

II.

Concerning the truth of the allegation in paragraph IV of the complaint, defendant has no knowledge or information sufficient to form a belief.

WHEREFORE defendant prays that the complaint herein be dismissed, and for its costs and disbursements herein.

WINFIELD R. SMITH,
Attorney for Defendant.

State of Washington,
County of King,—ss.

C. O. Steberg, being first duly sworn, says: That he is the president and treas. of the defendant corporation and makes this verification in its behalf; that he has read the foregoing answer, knows the contents thereof and believes the same to be true.

C. O. STEBERG.

Subscribed and sworn to before me this September 16, 1914.

LUCAS R. KELLS,
Notary Public in and for the State of Washington,
Residing at Seattle. [151]

Service of the within paper is hereby admitted this 16th day of September, 1914.

ARTHUR SCHRAMM, Jr.,
Attorney for Plf.

Filed in Clerk's office. Sep. 16, 1914. W. K. Sickels, Clerk. By G. A. Grant, Deputy.

Pltfs. Exhibit No. "B." Received in evidence Dec. 20, 1916. In Cause No. 1264. J. W. Bell, Clerk.
[152]

**Exhibit "C"—Order Appointing Receiver—Nevin v.
Pacific Coast & Norway Packing Co.**

In the Superior Court of King County, Washington.

No. 103,639.

ROY W. NEVIN,

Plaintiff,

vs.

PACIFIC COAST & NORWAY PACKING COM-
PANY, a Corporation,

Defendant.

Upon the verified complaint herein and after argument of counsel for the plaintiff and the defendant Pacific Coast & Norway Packing Company, it appearing to the Court that said defendant is in embarrassed financial circumstances and cannot meet its obligations as they mature; that suits have been begun against it and if its property is seized and sold at forced sale sufficient will not be realized to meet its obligations and that said defendant, though its assets now exceed its liabilities, is in imminent danger of insolvency.

IT IS HEREBY ORDERED that E. Schoenwald of Seattle, King County, Washington, be and he is hereby appointed receiver in this action of all the property, assets and business of the defendant upon his filing an undertaking executed to the State of Washington in the penal sum of \$20,000, with a sufficient surety to be approved by the Court, conditioned for the faithful discharge of the duties of such receiver in the usual form.

IT IS FURTHER ORDERED that the said receiver be and he is hereby empowered to take possession of and to do all things necessary to the preservation of the property and assets of the defendant, and continue the business of said defendant with full authority to do all things necessary thereto, until the further order of the Court and shall from time to time report to the Court his doings hereunder. [153]

Done in open court this September 16, 1914.

BOYD J. TALLMAN,
Judge.

Filed in Clerk's office. Sep. 16, 1914. W. K. Sickels, Clerk. By F. W. Smith, Deputy.

Pltfs. Exhibit No. "C." Received in evidence Dec. 20, 1915. In Cause No. 1264-A. J. W. Bell, Clerk. [154]

**Complainant's Exhibit "D"—Receiver's Bond—
Nevin v. Pacific Coast & Norway Packing Co.**

*In the Superior Court of the State of Washington,
in and for the County of King.*

No. 103,639.

ROY W. NEVIN,

Plaintiff,

vs.

PACIFIC COAST & NORWAY PACKING COM-
PANY, a Corporation,

Defendant.

KNOW ALL MEN BY THESE PRESENTS:
That we, E. Schoenwald as principal, and the National Surety Company, a corporation organized under the laws of the State of New York, and authorized to transact the business of surety in the State of Washington, as surety, are held and firmly bound unto the State of Washington in the just and full sum of Twenty Thousand no/100 Dollars, for the payment of which, truly to be made, we hereby bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

Sealed and dated this 16th day of September, A. D. 1914.

THE CONDITION of the foregoing bond is such that whereas, in the above-entitled action and by the above-entitled court, on the 16th day of September, A. D. 1914, the above-named principal was appointed receiver of the property, effects and business of the

Pacific Coast & Norway Packing Company, a corporation, with authority and instruction to take possession of all the property, assets and business and to preserve said property and continue the business of said corporation; and has been directed to give a bond to the said State of Washington in the sum of Twenty Thousand no/100 Dollars, according to law.

NOW, THEREFORE, If the above bounden principal shall and will faithfully discharge the duties of receiver in said action, and shall and will obey the orders of the Court therein, then this obligation shall be void, otherwise be and remain in full force [155] and effect.

E. SCHOENWALD. [Seal]
NATIONAL SURETY COMPANY.
By GEO. W. ALLEN,

Resident Vice-President.

[Corporate Seal] Attest: EDW. P. WELCH,
Resident Assistant Secretary.

Above bond approved this 16th day of September,
1914.

BOYD J. TALLMAN,

Judge.

Filed in Clerk's office. Sep. 16, 1914. W. K. Sickels, Clerk. By C. A. Grant, Deputy.

Pltfs. Exhibit No. "D." Received in evidence
Dec. 20, 1915. In Cause No. 1264-A. J. W. Bell,
Clerk. [156]

**Plaintiff's Exhibit "E"—Oath of Receiver—Nevin
v. Pacific Coast & Norway Packing Co.**

In the Superior Court of King County, Washington.

No. 103,639.

ROY W. NEVIN,

Plaintiff,

vs.

PACIFIC COAST & NORWAY PACKING COM-
PANY, a Corporation,

Defendant.

State of Washington,
County of King,—ss.

E. Schoenwald, being first duly sworn, says: I have this day been appointed by order of this Court receiver in the above-entitled action. I will faithfully discharge the duties of said trust to the best of my ability.

E. SCHOENWALD.

Subscribed and sworn to before me this September 16, 1914.

LUCAS C. KELLS,
Notary Public in and for the State of Washington,
Residing at Seattle.

Filed in Clerk's office. Sep. 16, 1914. W. K. Sickels, Clerk. By G. A. Grant, Deputy.

Plft.'s Exhibit No. "E." Received in evidence Dec. 20, 1915. In Cause No. 1264-A. J. W. Bell, Clerk. [157]

**Plaintiff's Exhibit "F"—Order Appointing Joint
Receiver and Instructing Receivers—Nevin v.
Pacific Coast & Norway Packing Co.**

In the Superior Court of King County, Washington.

No. 103,639.

ROY W. NEVIN,

Plaintiff,

vs.

PACIFIC COAST & NORWAY PACKING COM-
PANY, a Corporation,

Defendant.

It appearing to the Court that it is proper and desired by all concerned, including the present receiver, that a joint receiver be appointed as hereinafter set forth;

Now, therefore, it is ordered that S. T. Hills of Seattle, Washington, being the Secretary of the Seattle Merchants' and Credit Men's Association, be and he is hereby appointed a joint receiver in this action with E. Schoenwald, the present receiver, of all the property, assets and business of the defendant upon his filing an undertaking executed to the State of Washington in the penal sum of \$1,000, with a sufficient surety to be approved by the Court and conditioned in the usual form for the faithful discharge of his duties as such receiver.

IT IS FURTHER ORDERED that upon his filing such approved bond and his oath that he as such joint receiver shall be empowered equally with the present

receiver in the administration of the receivership and the operation of the business in accordance with the original Order appointing the receiver, save only that since it is contemplated that the present receiver will actively conduct the business and affairs of the receivership and the joint receiver hereby appointed will act chiefly in an advisory capacity, disbursements to be made in the receivership in accordance with the Orders of this Court up to the amount of one thousand dollars for any one disbursement shall be made by checks signed by E. Schoenwald alone as receiver as heretofore, and any disbursement [158] above the sum of one thousand dollars shall be made only upon check drawn by both receivers as such. A copy of this order shall be delivered forthwith to the National City Bank of Seattle, where the bank account of the receivership is now carried.

IT IS FURTHER ORDERED that the receivers do forthwith take any necessary and proper steps to the end of extending this receivership without delay over the property and assets of the defendant company located in the Territory of Alaska and its business operations therein.

Done in open court this September 25, 1914.

EVERETT SMITH,

Judge.

Filed in clerk's office Sep. 25, 1914. W. K. Sickels, Clerk. By F. W. Smith, Deputy.

Plf.'s Exhibit No. "F." Received in evidence Dec. 20, 1915. In Cause No. 1264-A. J. W. Bell, Clerk. [159]

**Plaintiff's Exhibit "G"—Receiver's Bond—Nevin
v. Pacific Coast & Norway Packing Co.**

*In the Superior Court of the State of Washington,
in and for the County of King.*

No. 103,639.

ROY W. NEVIN,

Plaintiff,

vs.

PACIFIC COAST & NORWAY PACKING COM-
PANY, a Corporation,

Defendant.

KNOW ALL MEN BY THESE PRESENTS:
That we, S. T. Hills, as principal, and the National
Surety Company, a corporation organized under the
laws of the State of New York, and authorized to
transact the business of surety in the State of Wash-
ington, as surety, are held and firmly bound unto
The State of Washington in the just and full sum
of One Thousand Dollars, for the payment of which,
truly to be made, as we hereby bind ourselves, our
heirs, executors, administrators, successors, and as-
signs, jointly and severally, firmly by these presents.

Scaled and dated this 25th day of September, A. D.
1914.

THE CONDITION of the foregoing bond is such
that whereas, in the above-entitled action and by the
above-entitled court, on the 25th day of September,
A. D. 1914, the above-named principal was appointed
receiver of the property, effects and business of the

Pacific Coast & Norway Packing Company, a corporation, with authority and instruction to take possession of all the property assets and business and to preserve said property and continue the business of said corporation and has been directed to give a bond to said State of Washington in the sum of One Thousand Dollars, according to law.

NOW, THEREFORE, if the above bounden principal shall and will faithfully discharge the duties of receiver in said action, and shall and will obey the orders of the Court therein, then this [160] obligation shall be void, otherwise be and remain in full force and effect.

S. T. HILLS. (Seal)

NATIONAL SURETY COMPANY.

By GEORGE W. ALLEN,

(Corporate Seal)

Attorney in Fact.

Approved Sep. 25/14.

EVERETT SMITH,

Judge.

Filed in clerk's office Sep. 25, 1914. W. K. Sickels, Clerk. By G. A. Grant, Deputy.

Plf.'s Exhibit No. "G." Received in evidence Dec. 20, 1915. In Cause No. 1264-A. J. W. Bell; Clerk. [161]

**Plaintiff's Exhibit "H"—Oath of Receiver—Nevin
v. Pacific Coast & Norway Packing Co.**

*In the Superior Court of the State of Washington
for King County.*

No. 103,639.

ROY W. NEVIN,

Plaintiff,

vs.

PACIFIC COAST & NORWAY PACKING COM-
PANY, a Corporation,

Defendant.

State of Washington,
County of King,—ss.

S. T. Hills, being duly sworn, says: I have this day been appointed by order of this Court, receiver in the above-entitled action, I will faithfully discharge the duties of said trust to the best of my ability.

S. T. HILLS.

Subscribed and sworn to before me this 25th day of September, 1914.

LUCAS C. KELLS,
Notary Public in and for the State of Washington,
Residing at Seattle.

Filed in clerk's office Sep. 25, 1914. W. K. Sickels, Clerk. By F. W. Smith, Deputy.

Plf.'s Exhibit No. "H." Received in evidence Dec. 20, 1915. In Cause No. 1264-A. J. W. Bell, Clerk. [162]

**Plaintiff's Exhibit "I"—Certificate of Clerk of
of Superior Court to Transcript in Nevin v.
Pacific Coast & Norway Packing Co.**

*In the Superior Court of the State of Washington
for the County of King.*

State of Washington,
County of King,—ss.

I, W. K. Sickels, County Clerk of King County and ex-officio Clerk of the Superior Court of the State of Washington for the County of King, do hereby certify that the foregoing is a full, true and correct transcript of the Complaint, Answer, Order Appointing Receiver, Receiver's Bond, Oath of Receiver, Order Appointing Joint Receiver and Instructing Receivers, Receiver's Bond and Oath of Receiver, Cause No. 103,639, Roy W. Nevin, Plaintiff, vs. Pacific Coast & Norway Packing Co., a cor., Deft., as the same appears on file and of record in my office.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said court this 28th day of September, 1914.

W. K. SICKELS,
Clerk.

(Seal of Superior Court, King County, Washington.)

State of Washington,
County of King,—ss.

I, Boyd J. Tallman, Judge of the Superior Court of the State of Washington for the County of King, the same being a Court of Record and having a clerk

and seal, do hereby certify that W. K. Sickels, who has signed the foregoing attestation, is the duly elected and qualified clerk of King County and ex-officio clerk of the superior court of the State of Washington for the County of King, that said signature is his genuine handwriting and that all his official acts as such clerk are entitled to full faith and credit, and I further certify that said attestation is in due form of law.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of said court to be hereunto affixed this 28th day of [163] September, 1914.

BOYD J. TALLMAN,
Judge.

(Seal Superior Court, King Co., Washington.)

State of Washington,
County of King,—ss.

I, W. K. Sickels, County Clerk of King County and ex-officio clerk of the Superior Court of the State of Washington for the County of King, do hereby certify that the Honorable Boyd J. Tallman, who has signed the foregoing certificate, is the duly elected and qualified Judge of said Court, and that the signature of said Judge to said certificate is his genuine handwriting.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said court this 28th day of September, A. D. 1914.

W. K. SICKELS,
Clerk.

(Seal, Superior Court King Co., Washington.)

Plf.'s Exhibit No. "I." Received in evidence Dec. 20, 1915. In Cause No. 1264-A. J. W. Bell, Clerk. [164]

**Plaintiff's Exhibit "J"—Exhibit "A" to Smith
Deposition in Nevin v. Pacific Coast & Norway
Packing Co.**

THIS INDENTURE, made this 26th day of October, 1914, between PACIFIC COAST & NORWAY PACKING COMPANY, a corporation of the State of Minnesota, party of the first part, and E. SCHOENWALD and S. T. HILLS, as receivers of said company, parties of the second part, WITNESSETH:

That the said party of the first part for and in consideration of the sum of one dollar (\$1.00) money of the United States to it in hand paid by the said parties of the second part, the receipt whereof is hereby acknowledged, does by these presents grant, bargain, sell, and convey unto the said parties of the second part and to their heirs and assigns the following described tracts, lots or parcels of land situate, lying and being in the territory of Alaska, particularly bounded and described as follows:

(1) All of the following described tract situated on the north side of Metkoff Island on the east shore of Wrangell Narrows, Alaska, more particularly described as follows, with magnetic variation $29^{\circ} 45'$ east:

Beginning at a point at high water mark on the north end shore of Metkoff Island, marked Beg. Cor. No. 1, Sur. No. 282 from whence U. S. Location Monument No. 7 bears south $57^{\circ} 57'$ west 86.97 chains

distant; thence east 19.70 chains to corner No. 2, thence north 19.99 chains to corner No. 3; thence west 21.31 chains to corner No. 4; thence south $1^{\circ} 45'$ east along beach 20 chains to corner No. 1, the place of beginning, containing 39.99 acres, being the lands embraced in survey No. 282, and being now platted (without dedication) as the town of Petersburg, Alaska; *excepting*, however, therefrom the portions heretofore sold by the first party, namely the following lands as shown on the recorded plat of the town of Petersburg, to wit: All of block 5, lots 4, 5, 6, 7 and 10, block 6, lots 4, 5, 6, 8, 9, 10, block 7, all of block 13 excepting lots 4 and 7, lots 1, 5, 8, 9, and 10, of block 14, and lots 1, 4, 6, 7, and 10, [165] block 15; together with appurtenances.

(2) All of the first party's right, claim, interest and easement in and to the tidelands upon which stand the first party's cannery, cannery dock, boat-house, warehouse and shipping dock, adjoining to the westward blocks 1 and 2 of the said plat of Petersburg; and in and to tidelands on which stand the shipyard and shipways adjoining to the westward block 4 and F Street as shown on said plat.

(3) All the first party's right, claim, interest and easement in and to the forty acre tract covered by Application No. 222 to purchase from the United States, which tract lies southwardly from the tract first above described, and on a part of the easterly end of which stand the first party's sawmill, box factory, lumber yard, wharves and booms used in connection therewith.

(4) All the first party's right, claim, interest and

easeinent in and to that certain tract comprising 79.929 acres according to official survey, for the purchase of which from the United States application has been made for a trade or manufacturing site, situated at Tonka on Kopreanof Island on the west shore of Wrangell Narrows, as shown by the official survey of this tract as a trade and manufacturing site of the first party, the survey having been made by Lloyd G. Hill, United States Deputy Surveyor, together with the tidelands in Wrangell Narrows in front of said site, on which stand the first party's cannery and wharf used in connection therewith.

TOGETHER with the appurtenances, to have and to hold the said premises with the appurtenances unto the said parties of the second part and to their heirs and assigns forever.

And the said party of the first part, its successors and assigns, does by these presents covenant, grant and agree to any with the said parties of the second part, their heirs and assigns, that it, the said party of the first part, its successors and assigns, all and singular, the premises hereinabove conveyed, described and granted, or mentioned, with the appurtenances unto [166] the said parties of the second part, their heirs and assigns, and against all and every person or persons whomsoever, lawfully claiming or to claim any part thereof, shall and will warrant and forever defend.

IN WITNESS WHEREOF the party of the first part has caused these presents to be signed and its corporate seal affixed by its president and secretary,

hereunto duly authorized.

PACIFIC COAST & NORWAY PACKING
COMPANY.

By C. O. STEBERG,
Its President.

And E. SCHOENWALD,
Its Secretary.

In the presence of:

MINA I. ANDREWS,
EUGENE W. BOND.

State of Washington,
County of King,—ss.

This is to certify that before me the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, on this 26th day of October, 1914, personally appeared C. O. Steberg and E. Schoenwald, to me known to be the president and secretary of the Pacific Coast & Norway Packing Company, the corporation that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of the said corporation for the uses and purposes therein mentioned, and on oath each for himself states that he was authorized to execute the said instrument in the name and as the act of the said corporation and that the seal affixed is the corporate seal of said corporation.

WITNESS my hand and seal the day and year above written.

(Notarial Seal) LUCAS C. KELLS,
Notary Public in and for the State of Washington,
Residing at Seattle.

State of Washington,
County of King,—ss.

No. 8835

I, W. K. Sickels, County Clerk of King County and ex-officio Clerk of the Superior Court of the State of Washington, [167] for the County of King, the same being a Court of Record, do hereby certify that Lucas C. Kells, the person whose name is subscribed to the annexed acknowledgment, certificate of proof or affidavit, and before whom the said was taken, was at the date thereof, and is now, a notary public in and for said State, duly appointed and commissioned; that by virtue of his said office, he is authorized to take acknowledgments and proofs of deeds or conveyances of lands, tenements and hereditaments situate, lying and being in said State of Washington, and to administer oaths.

I do further certify that I am acquainted with the handwriting of the said Lucas C. Kells, and verily believe the name subscribed to the said annexed acknowledgment, certificate or proof or affidavit, is his proper and genuine signature, and that the same is executed according to the laws of the State of Washington.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Court at Seattle, King County, Washington, this 26th day of October, A. D. 1914.

W. K. SICKELS,
Clerk.

By W. J. RUMIN,
Deputy.

(Seal of Superior Court, King County, Washington.)

“Exhibit A.” (To Smith deposition.)

Pltfs. Exhibit No. "J." Received in evidence Dec. 21, 1915. In Cause No. 1264-A. J. W. Bell, Clerk. [168]

**Plaintiff's Exhibit "K"—Exhibit "B" to Smith
Deposition—In Nevin v. Pacific Coast & Nor-
way Packing Co.**

KNOW ALL MEN BY THESE PRESENTS that pursuant to the order of the Superior Court of the State of Washington in and for King County, this day made and entered in the case of Roy W. Nevin, Plaintiff, v. Pacific Coast & Norway Packing Company, Defendant, No. 103,639 of said court, PACIFIC COAST & NORWAY PACKING COMPANY, a corporation organized under the laws of the State of Minnesota, first party, does hereby sell, transfer and set over unto E. Schoenwald and S. T. Hills, as receivers of the first party corporation and not otherwise, the following described personal property situated at the town of Petersburg on Wrangell Narrows in southeastern Alaska, namely:

(1) All engines, boilers, machinery and equipment whatever located in the building upon lots 6, 7 and 8, block 4, of the plat of the town of Petersburg, comprising a machine shop belonging to the first party.

(2) The first party's two-line salmon cannery, cannery dock, boat house, warehouse, and shipping dock, including all buildings, wharves and other structures whatever, and all boilers, engines, machinery and other equipment whatever comprising all of the property of the said plant, which plant is located in the tidelands adjoining to the westward

blocks 1 and 2 of the said plat of Petersburg.

(3) The shipyard and shipways belonging to the first party constructed upon the tidelands adjoining to the westward block 4 and F Street, as shown on said plat.

(4) The first party's sawmill, box factory, lumber yard, wharves, and booms, together with all engines, boilers, machinery and equipment whatever comprising the first party's mill and factory plant and all thereof, which plant is located on, or upon the tidelands in front of the 40 acre tract covered by application No. 222 to purchase from the United States.

(5) The power boats "Marian," "Valkyrie," "Eunice," "Mildred" and "Bernice"; 3 power seine boats, 4 seine skiffs [169] 17 seine skiffs and tenders, pile driver on scow, 1 housed barge scow, and 3 stanchion scows; all of which boats, pile driver and scows are located at or near the cannery plant hereinabove described.

(6) The first party's buildings, wharves and other structures at or near Tonke, hereinabove described, including the cannery buildings and wharves, the store building and bunkhouse.

(7) The stock of merchandise in the company's store and warehouse at Petersburg, Alaska, all cannery, saw-mill and machine shop supplies, including tin plate, cans and canned salmon on hand in the warehouse or cannery; all tools in machine shop, saw-mill or cannery, and the logs and lumber at the company's sawmill at Petersburg; and any and all other personal property of the first party within the territory of Alaska.

IN WITNESS WHEREOF the first party has caused these presents to be signed and its corporate seal affixed by its president hereunto empowered this October 26, 1914, at Seattle, Washington.

PACIFIC COAST & NORWAY PACKING
COMPANY.

(Corporate Seal)

By C. O. STEBERG,
President.

Pltfs. Exhibit No. "K." Received in evidence Dec. 21, 1915. In Cause No. 1264-A. J. W. Bell, Clerk.

"Exhibit B" (To Smith deposition). [170]

**Plaintiff's Exhibit "L"—Order Directing Pacific
Coast & Norway Packing Co. to Convey Prop-
erty in Alaska to Receiver.**

In the Superior Court of King County, Washington.

No. 103,639.

ROY W. NEVIN,

Plaintiff,

vs.

PACIFIC COAST & NORWAY PACKING COM-
PANY, a Corporation,

Defendant.

This matter coming on to be heard upon the application of E. Schoenwald and S. T. Hills as receivers of the Pacific Coast & Norway Packing Company for an order directing said company by its duly authorized officers to convey forthwith to said receivers all its real property in the territory of Alaska and to transfer to them all personalty there situated,

C. O. Steberg, president of said company, being present and consenting to such order, and it appearing to the court that said conveyance and transfer is necessary to the successful conduct of the receivership.

IT IS HEREBY ORDERED that the said Pacific Coast & Norway Packing Company convey to said receivers all its title to real estate situated in the territory of Alaska and transfer to said receivers all its personalty there situated, and said C. O. Steberg as president of said company is hereby directed to execute and deliver to said receivers a sufficient deed to said real estate and a bill of sale of said personalty.

Done in open court this October 26, 1914.

EVERETT SMITH,
Judge.

Pltfs. Exhibit No. "L." Received in evidence Dec. 21, 1915. In Cause No. 1264-J. J. W. Bell, Clerk. Per ————, Deputy. [171]

**Exhibit "C" to Smith Deposition in Nevin v.
Pacific Coast & Norway Packing Co.**

*In the Superior Court of the State of Washington for
the County of King.*

No. 103,639.

State of Washington,
County of King,—ss.
ROY W. NEVIN,

Plaintiff,

vs.

PACIFIC COAST & NORWAY PACKING CO.,
Defendant.

I, W. K. Sickels, County Clerk of King County, and ex-officio clerk of the Superior Court of the State of Washington for the County of King, do hereby certify that I have compared the foregoing copy with the original order in the above-entitled cause as the same appears on file in my office and the same is a true and perfect transcript of said original and of the whole thereof.

WITNESS my hand and the seal of the said Superior Court at my office in Seattle, this 2d day of Dec. 1915.

W. K. SICKELS,
Clerk.

By F. H. Smith,
Deputy.

(Seal of Superior Court of King County, Washington.)

(10¢ revenue stamp, cancelled.)

Exhibit "C" (To Smith deposition). [172]

United States of America,
District of Alaska,
Division No. One,—ss.

I do hereby certify that I am the official court stenographer for the First Judicial Division, Territory of Alaska; that as such I reported the proceedings in the trial of the above-entitled cause, to wit, E. Schoenwald and S. T. Hills and E. Schoenwald and S. T. Hills as Receivers and Assignees of Pacific Coast & Norway Packing Company, a corporation, plaintiffs, vs. Harry A. Bishop; as United States Marshal for the District of Alaska, Division No. 1, and D. N. McDonald, defendants; and that the above

and foregoing testimony and evidence is a full, true and correct transcript of all the testimony and evidence introduced upon the trial of said above-entitled cause.

Dated at Juneau, Alaska, March 14, 1916.

L. A. GREEN. [173]

BE IT FURTHER REMEMBERED that the above and foregoing, being all the evidence adduced, the plaintiffs requested the Court to make and adopt the following Findings of Fact and Conclusions of Law, which Findings of Fact and Conclusions of Law the Court refused to make and adopt, and plaintiffs were allowed an exception. [174]

In the District Court for the District of Alaska, Division Number One, at Juneau.

No. 1264-A.

E. SHOENWALD and S. T. HILLS, and E. SCHOENWALD and S. T. HILLS as Receivers and Assignees of the PACIFIC COAST & NORWAY PACKING COMPANY, a Corporation,

Plaintiffs,

vs.

HARRY A. BISHOP, as United States Marshal for the District of Alaska Division Number One, and D. N. McDONALD,

Defendants.

**Findings of Fact and Conclusions of Law Offered
by Plaintiffs.**

This cause came on regularly for trial on the 20th

day of December, A. D. 1915, before the above-entitled court, Winn & Burton appearing as attorneys for plaintiffs, and Gunnison & Robertson appearing as attorneys for defendants. A jury was empaneled and sworn to try said above-entitled cause, and after all the evidence had been introduced and submitted, both the plaintiffs and defendants moved the Court for an instructed verdict. Whereupon, the plaintiffs and defendants, by their respective attorneys, consented to the dismissal of the jury and that the above-entitled court, without a jury, should pass upon and determine the issues in the above-entitled cause. Therefore, from the evidence introduced the Court now makes its Findings of Fact and Conclusions of Law, to wit:

FINDINGS OF FACT.

I.

That E. Schoenwald and S. T. Hills, the above named plaintiffs, were, on, to wit, the 16th day of September, A. D. 1914, and on the 25th day of September, A. D. 1914 respectively appointed receivers of the Pacific Coast & Norway Packing Company, a corporation [175] organized under the laws of the State of Minnesota, by the Superior Court of King County, State of Washington, being a court of competent jurisdiction, in the case of Roy W. Niven vs. Pacific Coast & Norway Packing Company, cause No. 103, 639, of said King County Superior Court. That immediately thereafter said Schoenwald and Hills duly filed their bonds as such receivers and such bonds were duly and regularly approved and they duly and regularly qualified and became the receivers

of the said Pacific Coast & Norway Packing Company, and have ever since been, and now are receivers of said company.

II.

That the appointment of said plaintiffs, Schoenwald and Hills as receivers of said Pacific Coast & Norway Packing Company was voluntary on the part of said Pacific Coast & Norway Packing Company and at the suggestion and with the acquiescence, assistance and consent of said company and was done solely for the purpose of preserving and keeping intact the property and assets of said company and preventing forced sales thereof by reason of certain suits which had been brought, or were being threatened, and such appointment of said receivers was in order to secure equality among the creditors of the company; that at the time of the appointment of said plaintiffs as receivers, as aforesaid, the assets of said Pacific Coast & Norway Packing Company exceeded the liabilities, but such assets could not at said time be realized upon, and in order to protect and preserve the same it was deemed wise to have such receivers appointed to protect all the creditors alike, as aforesaid.

III.

That on, to wit, the 26th day of October, 1914, the said Pacific Coast & Norway Packing Company to further protect all the creditors alike and avoid the expense and occasion of appointing ancillary receivers in Alaska, and for the sake of [176] efficient, economic and unified administration of the assets of said Pacific Coast & Norway Packing Com-

pany, to the benefit of all the creditors alike, voluntarily and of its own free will and accord, conveyed all of its property, both real and personal, to the said E. Schoenwald and S. T. Hills in trust for the benefit of all creditors of said corporation; the real estate being conveyed by deed and the personal property, including the gasoline boat, "Bernice," by bill of sale, and the said Schoenwald and Hills immediately thereafter took possession of all of such personal property, including the said gasoline boat, "Bernice."

IV.

That at or about the time of the execution of the deed and bill of sale aforesaid, by the said Pacific Coast & Norway Packing Company conveying all of its property to said Schoenwald and Hills, as aforesaid, Mr. Robertson of the firm of Gunnison & Robertson, who were the attorneys for, and representing the claim of, D. N. McDonald, one of the defendants herein, the said Robertson having charge of the matter, was notified that the Pacific Coast & Norway Packing Company were about to execute such deed and bill of sale, and was asked to forward the claim of said McDonald, which consisted of two promissory notes then in the possession of said Robertson, to the receivers for collection, and the said Robertson did, at or about said time of the execution of said deed and bill of sale, take down the address of said receivers for the purpose of submitting said claim of D. N. McDonald to said receivers. That at said time neither the said Robertson nor the firm of Gunnison & Robertson nor the said D. N. McDonald, the de-

fendant, made any objection or in any way showed any disapproval to the execution of such deed and bill of sale conveying all the property to said Schoenwald and Hills for the benefit of the creditors as aforesaid. [177] That the first intimation the plaintiffs had of any dissatisfaction on the part of said D. N. McDonald to the conveyance by said Pacific Coast & Norway Packing Company to the said Schoenwald and Hills of all of its property, including the gasoline boat "Bernice," was several months thereafter when the said D. N. McDonald attached said gasoline boat "Bernice." That said Gunnison & Robertson at all times herein mentioned knew of the appointment of said Schoenwald and Hills as receivers aforesaid.

V.

That with the exception of D. N. McDonald, the defendant in this suit, and P. Duff & Sons, whose suit and wholesale garnishment helped to bring about the appointment of the receivers, there has been entire harmony and active co-operation between the receivers and Schoenwald and Hills as trustees and the creditors of the Pacific Coast & Norway Packing Company; that a committee of creditors was appointed consisting of four, being one representative of each of the four largest unsecured creditors, and so far as known to the receivers and said Schoenwald and Hills, trustees, all of the creditors except McDonald favored the transfer of the title to the Alaska assets, including the gasoline boat, "Bernice," to said receivers.

That the Pacific Coast & Norway Packing Company is a corporation organized under the laws of the

State of Minnesota, but its principal office is, and always has been, in the city of Seattle, State of Washington, and the policy of the company was determined in said City of Seattle and five out of the said directors live in or near Seattle in the State of Washington, and the Board held its meetings there and all of the financial affairs of said company were conducted there and a vast majority of the creditors, both in numbers and amount, were Seattle creditors or Eastern creditors from whom purchases were made at Seattle. [178]

VI.

That every trustee or director and all the stockholders of the Pacific Coast & Norway Packing Company desired, approved and ratified giving the said conveyance to said Schoenwald and Hills as trustees aforesaid, conveying the title to the Alaska assets, and approved the execution of the instruments transferring such assets to said E. Schoenwald and S. T. Hills as trustees; that this approval was not by a formal meeting of the stockholders, but was obtained by Mr. Schoenwald, one of the receivers, communicating with the great majority of the stockholders, and personally conferring with the rest of them; that the consent and approval of all the directors, as well as all of the stockholders, to the execution of the instruments transferring the legal title of the Alaska assets to the receivers was obtained in the manner aforesaid.

VII.

That on, to wit, the 26th day of October, A. D. 1914, the Superior Court of King County, State of Wash-

ington, in the case of Roy W. Niven, plaintiff, vs. Pacific Coast & Norway Packing Company, a corporation, defendant, cause No. 103,639, made and entered an order authorizing the Pacific Coast & Norway Packing Company to convey its Alaska assets to E. Schoenwald and S. T. Hills, and with the consent of said Pacific Coast & Norway Packing Company, which said corporation was present and represented in court at the time of making said order.

VIII.

That the transfer of the assets by said Pacific Coast & Norway Packing Company to E. Schoenwald and S. T. Hills was not made under and by virtue of any Washington statute, or any statute, or by compulsion of law, but the instruments were prepared and executed voluntarily by said company with a view of passing legal title to the said trustees in accordance with the [179] principles of common law, and for the benefit of all the creditors of said corporation alike.

From the foregoing FINDINGS OF FACT, the Court makes and finds the following,

CONCLUSIONS OF LAW.

I.

That the instruments executed by the said Pacific Coast & Norway Packing Company to E. Schoenwald and S. T. Hills as receivers, and described in the Findings of Fact, being a deed conveying the real estate, and a bill of sale conveying the personal property, including the gasoline boat, "Bernice," were voluntary common law conveyances, and conveyed all of the assets of said Pacific Coast & Norway

Packing Company, including the gasoline boat, "Bernice," in the Territory of Alaska, to said E. Schoenwald and S. T. Hills as trustees, and that as such trustees they hold the assets described in said instruments in trust for the benefit of all the creditors alike, including the said D. N. McDonald, defendant herein.

II.

That the foregoing instruments transferring the assets of said Pacific Coast & Norway Packing Company to said Schoenwald and Hills as aforesaid, were fully ratified and consented to by all of the directors and stockholders of said Pacific Coast & Norway Packing Company.

III.

That the said D. N. McDonald, the defendant herein, had sufficient notice of the transfer of said assets to said E. Schoenwald and S. T. Hills to know that the company had, or were about to transfer its assets, and his failure to object to the same at the time, together with his conduct, amounted to an acquiescence and consent to such transfers, especially in view of the fact that he lead plaintiffs to believe that he would submit [180] his claim to said receivers under the arrangement that said receivers had or should have the full legal title to all of the assets of said Pacific Coast & Norway Packing Company, for the benefit of all of its creditors alike.

IV.

That said Bill of Sale transferring the gasoline boat "Bernice" to the said Schoenwald and Hills, as trustees, was not under or by virtue of any statute or

by compulsion of any law, but was a voluntary common law transfer, made and executed freely and voluntarily by said Pacific Coast & Norway Packing Company, in trust, for the benefit of all the creditors of said company alike, and the legal title to said gasoline boat "Bernice" is vested in said Schoenwald and Hills for the benefit of such creditors, and is not subject to the subsequent attachment of defendant, McDonald, a local creditor of said Pacific Coast & Norway Packing Company.

V.

And the Court further concludes that ever since the making out and execution of the Bill of Sale herein mentioned by the said Pacific Coast & Norway Packing Company to the said Schoenwald and Hills as trustees, and at the time that the said McDonald sued out the attachment herein referred to and made the levy upon the said gasoline boat "Bernice," and at the time of the commencement of this replevin suit, the said Schoenwald and Hills were, and now are, the owners of and entitled to the possession of said gasoline boat "Bernice."

Let Judgment be entered herein accordingly.

Judge.

Foregoing requested Findings refused—Exception allowed.

R. W. J.,
Judge. [181]

Filed in the District Court, District of Alaska,
First Division. Jan. 26, 1916. J. W. Bell, Clerk.
By John T. Reed, Deputy.

[Endorsed]: No. 1264-A. In the District Court for the Territory of Alaska, Division No. 1. E. Schoenwald et al., Plaintiffs, vs. Harry v. Bishop et al., Defendants Findings of Fact and Conclusions of Law. Winn & Burton, Attorneys for Plaintiffs. Juneau, Alaska. [182]

BE IT FURTHER REMEMBERED, that the Court thereupon made and adopted its Findings of Fact and Conclusions of Law, as follows: [183]

*In the District Court for the District of Alaska,
Division Number One, at Juneau.*

No. 1264-A.

E. SCHOENWALD and S. T. HILLS, and E. SCHOENWALD and S. T. HILLS, as Receivers and Assignees of the PACIFIC COAST AND NORWAY PACKING COMPANY, a Corporation,

Plaintiffs,

vs.

HARRY A. BISHOP, as United States Marshal for the First Division of the District of Alaska, and D. N. McDONALD,

Defendants.

Findings of Fact and Conclusions of Law.

This case came on for hearing on the 20th day of December, 1915; the parties were represented by respective counsel and announced "ready for trial." The case was for trial on the complaint, answer and reply. Plaintiffs introduced evidence in their behalf and rested. Defendants introduced no evidence. Whereupon it was agreed in open court and

entered of record, that the jury heretofore empaneled in the cause might be discharged and the matter submitted to the Court for decision on the pleadings and the evidence. Whereupon the jury was discharged. Both sides then moved for judgment. The Court took the matter under advisement, and on the 3d day of January, 1916, rendered its opinion in favor of defendants, and directed findings to be presented accordingly.

And the Court does now hereby make, from the evidence and from the admissions in the pleadings, the following [184]

FINDINGS OF FACT.

I.

That on the 16th day of September, 1914, one Roy W. Nevin, as plaintiff, filed in the Superior Court of King County, Washington, his certain bill of complaint against the Pacific Coast & Norway Packing Company as defendant in which it was alleged (1) that said defendant was a Minnesota corporation, doing business in Washington and Alaska; (2) that said plaintiff was a creditor of said corporation to the amount of \$1,284; (3) that said corporation was in imminent danger of insolvency; which said complaint prayed for judgment against said corporation for \$1,284, and "for the appointment of a receiver of the property, assets and business of the defendant to control and manage the same and to continue the business of said corporation for the benefit of all its creditors."

II.

That on the 16th day of September, 1914, said cor-

poration filed an answer in said suit, denying any indebtedness to the plaintiff therein, and praying "that the complaint herein be dismissed and for its costs and disbursements."

III.

That thereafter, to wit, on September 16, 1914, in said court and cause, an order was passed and entered, in words and figures following, to wit; [185]

"Upon the verified complaint herein and after argument of counsel for the plaintiff and the defendant Pacific Coast & Norway Packing Company, it appearing to the Court that said defendant is in embarrassed financial circumstances and cannot meet its obligations as they mature; that suits have been begun against it and if its property is seized and sold at forced sale sufficient will not be realized to meet its obligations and that said defendant, though its assets now exceed its liabilities, is in imminent danger of insolvency.

IT IS HEREBY ORDERED that E. Schoenwald of Seattle, King County, Washington, be and he is hereby appointed receiver in this action of all the property, assets and business of the defendant upon his filing an undertaking executed to the State of Washington in the penal sum of \$20,000.00 with a sufficient surety to be approved by the court, conditioned for the faithful discharge of the duties of such receiver in the usual form.

IT IS FURTHER ORDERED that the said receiver be and he is hereby empowered to take possession of and to do all things necessary to the preservation of the property and assets of the defendant, and

continue the business of said defendant with full authority to do all things necessary thereto, until the further order of the court and shall from time to time report to the court his doings hereunder.

DONE in open court this September 16, 1914.

BOYD J. TALLMAN,
Judge."

IV.

That on the 25th day of September, 1914, said Court did appoint S. T. Hills as coreceiver, and did by its order direct "that the receivers do forthwith take any necessary and proper steps to the end of extending this receivership without delay over property and assets of the defendant company located in the territory of Alaska, and its business operations therein." (Plaintiff's Exhibit "F.")

V.

That said Schoenwald and Hills, after having duly qualified as such receivers, came into immediate possession [186] of the following described property (among other property) of the said Pacific Coast & Norway Packing Company, to wit: the "Bernice," a gasoline power seine boat of the burden of 11 tons, her engine, tackle, equipment, machinery and furniture.

Said boat was then and there, and is now, of the value of \$2,000 and was then, and is now, situate in the territory of Alaska, and within the jurisdiction of this court, and was at said time and until long after the levy upon her of the attachment hereinafter referred to, licensed and documented in the United States Customs District for Alaska.

VI.

That on, to wit, the 26th day of October, 1914, the said court did, in said cause, make and enter the following order :

“This matter coming on to be heard upon the application of E. Schoenwald and S. T. Hills as receivers of the Pacific Coast & Norway Packing Company for an order directing said company by its duly authorized officers to convey forthwith to said receivers all its real property in the territory of Alaska and to transfer to them all personalty there situated, C. O. Steberg, president of said company, being present and consenting to such order, and it appearing to the court that said conveyance and transfer is necessary to the successful conduct of the receivership.

IT IS HEREBY ORDERED, that the said Pacific Coast & Norway Packing Company convey to said receivers all its title to real estate situated in the territory of Alaska and transfer to said receivers all its personalty there situated, and said C. O. Steberg as president of said company is hereby directed to execute and deliver to said receivers a sufficient deed to said real estate and a bill of sale of said personalty.

Done in open court this October 26, 1914.

EVERETT SMITH,

Judge.”

VII.

That thereafter, to wit, on October 26, 1914, there was made and delivered to said receivers a certain instrument in writing, signed “Pacific Coast & Norway Packing Company, by [187] C. O. Steberg,

its President," to which was affixed the seal of said corporation; said instrument purported on its face to have been (and in fact it was) executed "pursuant to the order of the Superior Court of the State of Washington, in and for King County, this day made and entered in the case of Roy W. Nevin, plaintiff, vs. Pacific Coast & Norway Packing Company, defendant, No. 103,639 of said court," and purported on its face to "sell, transfer and set over unto E. Schoenwald and S. T. Hills, as receivers of the first party corporation and not otherwise" the said "Bernice," which said instrument was not placed of or on record in any office whatsoever until long after the levy of said attachment upon said "Bernice."

VIII.

That said corporation has not by any action of its governing board transferred or assigned said property to said Schoenwald and Hills, in any capacity or at all, nor at all ratified nor acquiesced in any such assignment, or in said receivership proceedings.

IX.

That on or about the 25th day of January, 1915, one D. N. McDonald (one of the defendants herein) was, and for a long time prior thereto had been, and is now, a resident of this Division of the territory of Alaska, and was and is now a creditor of said Pacific Coast & Norway Packing Company, being then and there the owner of two certain promissory notes, signed by the said Pacific Coast & Norway Packing Company, for \$1,404.89, which notes had been given by said corporation before it went into the hands of a receiver for a certain indebtedness accruing in the

District of Alaska to the said McDonald prior to the time of the said appointment of said [188] receivers, and that as said owner and holder said McDonald did, on said day, commence in this court an action against said Pacific Coast & Norway Packing Company for the recovery of the amount due on said notes; said action being the action mentioned in the pleadings herein.

X.

That thereafter such proceedings were had in said action that said boat "Bernice," her engine, tackle, equipment, machinery and furniture, were duly and regularly attached by H. A. Bishop, U. S. Marshal for the First Division of Alaska (one of the defendants herein), and by him duly held as such marshal to satisfy such judgment, if any, as might be recovered in said action.

XI.

That in said action said corporation Pacific Coast & Norway Packing Company, duly appeared and filed an answer, and such proceedings were had that on the 20th day of April, 1915, said McDonald duly and regularly recovered judgment against said corporation on said notes for \$1,404.89, interest, costs and attorney's fees; and in said judgment it was duly ordered that said "Bernice" be sold by said marshal to satisfy said judgment. [189]

XII.

That at the time of the demand by plaintiffs herein upon said defendant Bishop for the possession of said vessel "Bernice," and at the time of filing this action of claim and delivery, said vessel "Bernice,"

her engine, tackle, equipment, machinery and furniture, were duly held by said defendant Bishop as United States Marshal under and by virtue of said writ of attachment and judgment in said action brought by defendant McDonald against the Pacific Coast & Norway Packing Company, and that three days after the commencement of this action the said "Bernice," her engine, tackle, equipment, machinery and furniture, were by virtue of the giving of a bond to said defendants by plaintiffs given and surrendered to plaintiffs, as by law provided.

XIII.

That defendant McDonald has not at any time been a party to, or in any manner acquiesced in or assented to, instigated, endorsed or ratified, or received any advantage or benefit whatsoever flowing from, said receivership and assignment, or either of them, and that neither of said defendants had any knowledge or notice, either actual or constructive, of the purported sale or assignment of said vessel "Bernice" to the plaintiffs until after the levy upon said vessel of the attachment in said action brought by defendant McDonald against the Pacific Coast & Norway Packing Company.

XIV.

That the plaintiffs have not been damaged by the defendants, or either of them, in any sum whatsoever.

And from the foregoing facts found, the Court deduces the following [190]

CONCLUSIONS OF LAW.

I.

That the receivership of Schoenwald and Hills was

an *in invitum* proceeding, and the said assignment to Schoenwald and Hills as receivers was an *in invitum* proceeding, and that both are in conflict with the rights of the defendant McDonald, a local creditor, and are against public policy, and have no extraterritorial effect, and should not be enforced in this territory.

II.

That the possession by said defendant Bishop as United States Marshal of said vessel "Bernice," her engine, tackle, equipment, machinery and furniture, was rightful and according to law, and that the defendant McDonald has a valid lien upon said "Bernice," her engine, tackle, equipment, machinery and furniture, by virtue of the attachment and judgment in said action brought by him against said Pacific Coast & Norway Packing Company, and that the defendants are entitled to a judgment that plaintiffs take nothing by this action and that the said vessel "Bernice," her engine, tackle, equipment, machinery and furniture be returned and restored to the defendants, in order that the same may be held under said attachment and judgment in said action brought by said McDonald against said Pacific Coast & Norway Packing Company, or, if returned thereof cannot be had, then for judgment against the plaintiffs for the value of said boat, to wit: \$2,000.00; and for their costs and disbursements herein.

Made and entered in open Court this February 1, 1916.

ROBERT W. JENNINGS,
Judge of the District Court.

Filed in the District Court, District of Alaska, First Division, Feb. 1, 1916. J. W. Bell, Clerk. By C. Z. Denny, Deputy. [191]

BE IT FURTHER REMEMBERED that the plaintiffs thereupon filed their Motion for a New Trial as follows: [192]

*In the District Court for the District of Alaska,
Division Number One, at Juneau.*

No. 1264-A.

E. SCHOENWALD and S. T. HILLS, and E. SCHOENWALD and S. T. HILLS, as Receivers and Assignees of the PACIFIC COAST AND NORWAY PACKING COMPANY, a Corporation,

Plaintiffs,

vs.

HARRY A. BISHOP, as United States Marshal for the First Division of the District of Alaska, and D. N. McDONALD,

Defendants.

Motion for New Trial.

Come now the above-named plaintiff, by their attorneys, Winn & Burton, and feeling themselves aggrieved, by the Findings of Fact and Conclusions of Law made, rendered and filed herein by the Court, move the court to set aside the following Findings of Fact and Conclusions of Law, and to grant a new trial herein upon the following grounds and for the following reasons:

I.

Finding of Fact No. VII, and especially all of that

portion of said Finding wherein it is stated that the deed of conveyance from the Pacific Coast & Norway Packing Company of its property to the receivers mentioned therein was made under and by virtue of the order referred to herein made by the Superior Court of the State of Washington for King County, for the reason that said Finding is not supported by any evidence in the case whatsoever but on the contrary the evidence shows that the transfer was voluntarily made by said corporation for the benefit of all of its creditors and not in pursuance of any order of the Court, or any law governing receiverships in the State of Washington but that the Court was simply asked [193] to ratify the free and voluntary act and deed of said corporation in the making of said conveyance, and that said Finding is against law.

II.

Finding of Fact No. VIII for the reason that said Finding of Fact is not supported by any evidence in said cause, and is contrary to the evidence, and particularly there is no evidence to support the following portion of said Finding: "In any capacity or at all, nor at all ratified nor acquiesced in any such assignment, or in said receivership proceedings." On the contrary the undisputed evidence shows that the said corporation did ratify and acquiesce in the assignment made under the deed to the said Schoenwald and Hills, and did participate in the receivership proceedings, and that said Finding is against law.

III.

Finding of Fact No. XIII for the reason that said

Finding is against the undisputed testimony and evidence in this cause and is not supported by any testimony and evidence, and is against law.

IV.

Conclusion of Law No. I for the reason there is no testimony or evidence in said cause to support said Conclusion of Law. In fact that said conclusion is contrary to all the evidence in said cause, and is against law.

V.

Conclusion of Law No. II for the reason there is no testimony or evidence in said cause to support said Conclusion of Law. In fact that said conclusion is contrary to all the evidence in said cause, and is against law.

WINN & BURTON,

Attorneys for Plaintiff.

Due service of the within Motion accepted this 3d day of February, A. D. 1916.

GUNNISON & ROBERTSON,

Attorneys for Defendants. [194]

Filed in the District Court, District of Alaska, First Division. Feb. 3, 1916. J. W. Bell, Clerk. By C. Z. Denny, Deputy.

[Endorsed]: In the District Court for the Territory of Alaska, Division No. 1. E. Schoenwald et al., Plaintiffs, vs. Harry A. Bishop et al., Defendants. Motion for New Trial. Winn & Burton, Attorneys for Plaintiffs. Juneau, Alaska. [195]

BE IT FURTHER REMEMBERED that the court then entered its Order Denying the Motion for a New Trial, as follows: [196]

*In the District Court for the District of Alaska,
Division Number One, at Juneau.*

No. 1264-A.

E. SCHOENWALD et al.,

vs.

HARRY A. BISHOP, etc., et al.

Order Denying Motion for New Trial.

Now at this time comes on regularly for hearing plaintiff's motion for a new trial herein, N. L. Burton, Esquire, appears in support of the motion, and R. E. Robertson, Esquire, in opposition thereto.

After hearing the argument of Mr. Burton, in support of the motion, the motion is denied.

ROBERT W. JENNINGS,

District Judge.

Monday, February 7, 1916. [197]

Order Settling Bill of Exceptions.

And now this matter coming on to be heard on the motion of the plaintiffs, asking that the above and foregoing be signed, settled and allowed as a Bill of Exceptions and made a part of the record herein, and that the Court certify that same contains all the evidence adduced and proceedings had, I, Robert W. Jennings, Judge of the United States District Court for Alaska, Division Number One, being the Judge before whom said cause was tried and said proceedings had, do hereby sign, settle and allow the

foregoing as a full, true and correct bill of exceptions herein, and order that the same be filed and made a part of the record herein; and I do further certify that the above and foregoing contains all the evidence adduced upon the trial of the above-entitled cause, together with copies of the exhibits introduced in said trial, to wit: Exhibits "A," "B," "C," "D," "E," "F," "G," "H," "I," "J," "K" and "L," and the findings of fact and conclusions of law filed and made herein and the Motion for New Trial filed herein, all of which are likewise made a part of the record herein; and I do further certify that said Bill of Exceptions was filed and presented, and settled and signed within the time allowed by law and the rules and practice of this court.

Signed in open court this 29th day of April, 1916.

ROBERT W. JENNINGS,
Judge. [198]

*In the District Court for the District of Alaska,
Division No. One, at Juneau.*

No. 1264-A.

E. SCHOENWALD and S. T. HILLS, and E.
SCHOENWALD & S. T. HILLS, as Receiv-
ers and Assignees of the PACIFIC COAST
& NORWAY PACKING COMPANY, a
Corporation,

Plaintiffs,

vs.

HARRY A. BISHOP as United States Marshal for
the District of Alaska, Division Number One,
and D. N. McDONALD,

Defendants.

Memorandum Opinion. [199]**THE PLEADINGS.**

COMPLAINT. The complaint alleges in substances as follows:

Appointment September 16, 1914, by a Washington court, of S. T. Hills and E. Schoenwald, as receivers of the Pacific Coast and Norway Packing Company, a Minnesota corporation.

General assignment October 26, 1914, by said company to said Schoenwald and Hills, as receivers and assignees, of all the company's property in the Territory of Alaska (including the gasoline boat "Bernice") "voluntarily and of its own free will and accord"; which said boat was, and always (so far as material to this case) had been in the 1st Div. of Alaska.

Qualification of said Schoenwald and Hills, and immediate taking of possession of said boat by them.

Attachment by writ from Alaska Court January, 1915, of said boat by McDonald, who knew of and assented to said assignment.

ANSWER. The answer is substantially as follows: Denies all the material allegations of the complaint except the attachment; denies capacity of plaintiffs to sue; denies jurisdiction of this Court, and sets up the attachment, and alleges that McDonald is and was a resident creditor.

THE EVIDENCE.

The case was tried by *to* the Court without a jury, and at the conclusion of plaintiffs' case defendant rested, and both sides demanded judgment.

The evidence shows that the complaint, on which the receiver was appointed by the Washington Court, was one brought by Roy W. Nevin vs. Pacific Coast and Norway Packing Company, alleging that plaintiff in said cause was a creditor of the defendant corporation and that the said corporation "is financially embarrassed and cannot meet their obligations as [200] they mature. Suits have been begun against it, and if its property is seized at forced sale, sufficient cannot be realized to meet its obligations. Although defendant's assets now exceed its liabilities, said defendant is in immediate danger of insolvency." The prayer of said complaint being for the appointment of a receiver of the property, assets and business of the defendant to control and manage the same and to continue the business of said corporation for the benefit of all its creditors, and for judgment against said defendant in the amount of \$1,284.00, with plaintiff's costs and disbursements herein." (Plaintiffs' Exhibit "A.")

The evidence further shows that to this complaint an answer was filed by the defendant corporation denying the ownership by plaintiff therein of any claim against it, and praying "that the complaint herein be dismissed, and for its costs and disbursements herein." (Plaintiff's Exhibit "B.")

The evidence shows that in said cause the Washington Court made the following order:

"Upon the verified complaint herein and after argument of counsel for the plaintiff and for the defendant, Pacific Coast and Norway Packing Company, it appearing to the Court that said defendant is in embarrassed financial

circumstances and cannot meet its obligations as they mature; that suits have been begun against it, and if its property is seized and sold at forced sale, sufficient will not be realized to meet its obligation, and that said defendant, though its assets now exceed its liabilities, is in imminent danger of insolvency;

It is hereby ordered that E. Schoenwald, of Seattle, King County, Washington, be, and he is hereby, appointed receiver in this action of all the property, assets and business of the defendant, upon his filing an undertaking executed to the State of Washington in the penal sum of \$20,000, with a sufficient surety to be approved by the Court, conditioned for the faithful discharge of the duties of such receiver in the usual form.

It is further ordered that the said receiver be, and he is hereby, empowered to take possession of and to do all things necessary to the preservation of the property and assets of the defendant, and continue the business of said defendant, with full authority to do all things necessary thereto, until the further order of the Court, and shall from time to time report to the Court his doings hereunder.

Done in open court this September 16, 1914.

BOYD J. TALLMAN,

Judge."

(Plaintiffs' Exhibit "C.") [201]

The evidence further shows that immediately thereafter said Receiver qualified and took posses-

sion of said assets, and that Hills was afterwards appointed coreceiver, and duly qualified as such.

The evidence further shows that afterwards, to wit, on the 26th day of October, 1914, the said Court made an order directing the Company to execute a general assignment, and that the Company did so by a conveyance, reciting that it was executed "in pursuance of said order." (Plaintiffs' Exhibit "K.")

The evidence further shows that defendant McDonald was a creditor resident in Alaska (Cross-examination, deposition of Steberg, President), but it does not show that he knew that said assignment had been made or consented or acquiesced in the receivership and assignee proceedings, although it does appear that he had been informed that such an assignment was going to be made.

THE GIST OF THE CONTROVERSY.

It will thus be seen that the contest is as to the superiority of right between a foreign receiver and assignee in possession of the debtor's property in this Territory, and a local creditor attaching said property in the Courts of this Territory subsequent to the said appointment of said receiver-assignee.

Plaintiffs' position substantially, is this:

(1) That by comity they have a standing in this court;

(2) That by virtue of being assignees and vested with the title, they have a standing in this court;

Defendant controverts both contentions.

COMITY.

1. As to comity: It might be remarked in passing that such a Receivership as has here been con-

stituted by the Washington Court, to wit, a receivership to extricate from financial embarrassment and difficulties with creditors, a purely private, [202] solvent, corporation, is unknown to the Alaska law, although there seems to be a statute in the State of Washington authorizing such a proceeding.

I can see no occasion for the application here of the doctrine of comity. As said by Mr. Justice Day, in rendering the opinion of the Supreme Court in *Disconto v. Umbreit*, 208 U. S., on page 579:

“The doctrine of comity has been the subject of frequent discussion in the courts of this country when it has been sought to assert rights accruing under assignments for the benefit of creditors in other States as against the demands of local creditors by attachment or otherwise in the State where the property is situated. The cases were reviewed by Mr. Justice Brown, delivering the opinion of the Court in *Security Trust Co. vs. Dodd, Mead & Co.*, 173 U. S. 624, and the conclusion reached that voluntary assignments for the benefit of creditors should be given force in other States as to property therein situate, except so far as they come in conflict with the rights of local creditors, or with the public policy of the State in which it is sought to be enforced; and, as was said by Mr. Justice McLean, in *Oakéy v. Bennett*, 11 How. 33, 44, ‘national comity does not require any government to give effect to such assignment (for the benefit of creditors) when it shall impair the remedies or lessen the securities of its own citizens.’ ”

2. Plaintiffs contend that—

(a) The assignment in question is a common-law assignment for the benefit of creditors;

(b) A common-law assignment for the benefit of creditors good where made is good everywhere.

It seems to be conceded that a safeguard for resident creditors exists in the case of foreign statutory assignments, but its existence in the case of a common-law assignment is denied.

In this connection, then, it is to be considered whether or not this is a common-law assignment.

NOT A COMMON-LAW ASSIGNMENT.

This Court cannot well see how it can be considered a common-law Assignment, when it is not shown to have been the act of the Company. No resolution of the Board of Directors authorizing the assignment is shown—nothing to show that it has ever been even discussed at any meeting, or that any meeting of the board was ever held for that purpose, nor that its making has ever been [203] ratified. Only this appears, that the president and some of the directors and the attorneys, have informally and individually agreed that the assignment ought to be made—that this would not be sufficient to validate an Assignment is well borne out by the authorities.

(2 R. C. L. p. 649: “Unless otherwise provided by statute, the general rule is, that a corporate assignment must be executed by the board of directors, or a quorum thereof, at a meeting duly called for that purpose, or be executed by an officer of the corporation, duly authorized by a resolution of the board of

directors. That consent of stockholders is entirely unnecessary. It seems that the action of the directors must be joint, and consequently an invalid assignment cannot be later validated by the ratification of a majority of the directors acting individually. It is universally held that the power to assign the property of a corporation is not incident to any corporate office, and an assignment made by any officer without being duly authorized by the board of directors is invalid, and this is true even when the officer assigning owns a large majority of the stock, and is in complete control of the corporation'';

and cases cited in notes 5, 6, and 7, particularly Calumet Paper Co. vs. Haskell, 144 Mo. 331, 66 A. S. R. 425, where the Court say:

“Where a creditor elects to disregard the assignment and attaches the property of the corporation, and thereupon a contest arises between him and the assignee, the question is one which concerns the title of the assignee to the property, and it is properly drawn in question in such a proceeding; it is not a question where, in theory of law, the validity of the assignment is subject to collateral attack. But if it were, the rule would be the same; since such an assignment is not a judicial proceeding, and in every case where any person asserts rights under it as against a stranger, the burden is upon him to show at least an assignment valid on its face; and the other party may show that it was invalid by reason of extrinsic facts, as that it was unau-

thorized by a legal meeting of the directors”: 5 Thompson on Corporations, sec. 6478. When such an assignment has not been validated by acquiescence or laches, it may obviously be impeached, either by creditors or stockholders, on the ground that it was not made by the directors at a meeting duly convened, that is to say, on the ground that it was not made by the board of directors at all, for the acts of the directors are of no validity unless they are regularly assembled and acting as a board, and unless the proper quorum has concurred in the action which is challenged”: 5 Thompson on Corporations, sec. 6479.” Also *Doernbecher v. Columbia City Lumber Co.*, 21 Or. 573.)

In the case at bar there has not even been a resolution of ratification. [204]

EFFECT OF THE TWO KINDS OF ASSIGNMENTS.

It cannot be denied that there is a substantial difference in the respective effects of the two kinds of assignments, but that difference seems to turn not so much upon the question of the rights of *resident* creditors thereunder, as upon the question as to whether or not there is any statute or policy in the given State forbidding or regulating such Assignments.

The Supreme Court of the United States, in *Security Trust Co. vs. Dodd, Mead & Co.*, 173 U. S. (624)—628—differentiates as follows:

“The operation of (voluntary or) common-law assignments upon property situated in other

States has been the subject of frequent discussion in the courts, and there is a general consensus of opinion to the effect that such assignments will be respected, except so far as they come in conflict with the *rights of local creditors*, or with the laws of public policy of the State in which the assignment is sought to be enforced. The cases in this court are not numerous, but they are all consonant with the above general principle. (Citing authorities.)

But the rule with respect to statutory assignments is somewhat different. While the authorities are not altogether harmonious, the prevailing American doctrine is that a conveyance under a state insolvent law operates only upon property within the territory of that State, and that with respect to property in other States it is given only such effect as the laws of such State permit; and that, in general, it must give *way to claims of creditors pursuing their remedies there*. It passes no title to real estate situated in another State. Nor, as to personal property, will the title acquired by it prevail against the rights of attaching creditors under the laws of the State where the property is actually situated. (Citing authorities.)”

According to this, the rights of local creditors are safe-guarded whether the assignment be a common-law assignment or a statutory assignment.

THE RECEIVERSHIP AND ASSIGNMENT ARE IN INVITUM.

It seems to the Court that whether the assignment

in question be called a common-law or a statutory assignment is not significant, unless the term "common-law assignment" be taken to mean the same as voluntary assignment, and the term "statutory assignment" is taken as synonymous with involuntary assignment, for the test is not the name of the assignment but its nature as [205] being *invitum* (voluntary) or *in invitum* (compulsory).

The conclusion arrived at is this, to wit: The receivership having been constituted in an adversary proceeding, (a suit by a creditor), is itself *in invitum*; The assignment having been made by the order of the Court in aid of this *in invitum* receivership is likewise *in invitum*. The order of the Court must be taken as the source of and authority for the assignment—certainly so, when that is the only authority shown. The fact that some, perhaps all, of the officers and attorneys of the corporation, were more or less agreeable to, or even instigated the receivership and assignment, is unimportant when it is considered that the order of the Court recites:

"This matter coming on to be heard upon the application of *E. Schoenwald and S. T. Hills as receivers* of the Pacific Coast and Norway Packing Company for an order directing said company by its duly authorized officers to convey forthwith to said receivers all its real property in the territory of Alaska, and to transfer to them all personalty there situated, C. O. Steberg, president of said company, being present and consenting to such order, and it appearing

to the court that said conveyance and transfer is necessary to the successful conduct of the receivership;

IT IS HEREBY ORDERED that the said Pacific Coast & Norway Packing Company convey to said receivers all its title to real estate situated in the territory of Alaska and transfer to said receivers all its personalty there situated, and said C. O. Steberg, as president of said company is hereby directed to execute and deliver to said receivers a sufficient deed to said real estate and a bill of sale of said personalty”;

and when it is further considered that the assignment purports on its face to have been executed “pursuant to the order of said court” in said cause and is particular to state that it is to Schoenwald and Hills “as receivers and not otherwise.” (Plaintiffs’ Exhibit “K.”)

A similar question arose in the case of *Huntington v. C. & O. Ry.*, reported in the 98 Fed. 459. In that case there was no prior Resolution of the Board of Directors, authorizing the assignment, although after the court had appointed a receiver and directed the transfer, and the transfer had been made, there was a resolution *ratifying* the assignment. But the Court held [206] that the assignment took its character from the action of the Court, not from the action of the Directors. The Court say, (p. 463):

“In form, the suit is adversary and involuntary, and it is not for this court to inquire whether the corporation was more or less willing or unwilling that the prayer of the com-

plaint should be granted. The plaintiff had appealed to the court, and, if he had a good cause of action, the relief must necessarily be granted, whether resisted by defendant or not. This fact, and the form of the suit, settles its character."

And speaking of the ratified assignment (p. 461-2):

"It was the evident purpose of the stockholders, as appears from the closing words of the resolution, to confirm the title of Zacher as receiver, and to quitclaim—every claim that the company might have to any remnant of ownership in any of its property, if the effect of the judgment appointing the receiver, with the powers and authority given him, had left any remaining. It does not seem to have been, nor in any way to have been intended to be, an independent assignment for the benefit of creditors. The resolution passed by the stockholders authorized nothing of the kind, *and the deed, itself, by its terms and by being executed to the receiver in his official capacity*, excludes any such idea as that it was executed as an original voluntary assignment for the benefit of the creditors of the company. It was executed *in aid of the receivership*." And concluding (p. 464):

"There having been in fact no voluntary assignment either made or authorized by the corporation for the benefit of creditors, but only an assignment, worked out through the opera-

tion of the judicial decree of the court in Connecticut under the statute of that State, it is precisely equivalent to a statutory assignment by the company under the insolvent laws of Connecticut regarding corporations.”

See, also, *Zacher v. Fidelity Trust and Safety Co.*, 59 S. W. 493, where the Court say, on page 495:

“The relief was sought by a stockholder and creditor. The corporation was made a defendant. The judgment, upon its face, did not purport to be a consent judgment, and this Court will not inquire whether the corporation itself instigated the granting of the relief sought by the creditor who instituted the suit. There was in fact no voluntary or common-law assignment, for the benefit of all the creditors equally made or authorized by the corporation, such as this Court has held to be binding upon creditors resident in this State. On the contrary, we think the proceeding in Connecticut was a statutory one for winding up the affairs of an insolvent corporation under the laws of that State, and is operative as to property in Kentucky only so far as the courts in this State choose to respect it, and that so far as appellant, as receiver or assignee, took title to such property, he took it subservient to appellee’s attachment.” [207]

On this point defendant cites the case of *Ward vs. Connecticut Pipe Company*, 41 Atl. 1057. It is true that the distinguished judge who rendered the

decision in that case held that the assignment was voluntary, although ordered by the Court. In that case, however, there had been a vote of the directors authorizing the assignment, and the receivership proceeding was by the shareholders themselves under a statute of Connecticut which "authorizes the Superior Court as a court of equity to wind up the affairs of any such corporation and to dissolve it *on the complaint of the shareholders.*" In the case at bar there is no evidence of any corporate action, and the receiver was appointed in an adversary proceeding—that is, at the suit of a creditor. Had the Connecticut case been similar to the case at bar, this language of Judge Baldwin would have governed, to wit:

"If the assignment by the defendant to the receiver had been forced upon it at the instance of a creditor, this might have been an *invitum* proceeding," citing *Catlin v. Silver Plate Co.*, 123 Ind. 477; 24 N. E. 250;

and then, too, this Connecticut case did not involve the rights of resident creditors.

The question here is as between a resident creditor and a foreign assignee, and the cases cited by plaintiff are, with one or two exceptions, cases between a foreign creditor and a foreign assignee, or the actual point decided in said cases is entirely foreign to the subject here under discussion, or the assignment was clearly not in *invitum*. For instance:

OLIVER v. CLARK, 106 Fed. 402: This was not a controversy wherein any rights of creditors

were involved. It was a suit in Texas about the title to land in Texas. Clark deraigned his title from a man by the name of Penniman; Clark was the receiver of the firm which had succeeded to Penniman's interest, and which claimed the land under a vendor's lien held by Penniman. Under the laws of Texas a vendee of land on which [208] there had been reserved a vendor's lien does not obtain the title; the title remains in the vendor—the vendee taking only an equitable interest (page 403, middle). The United States Court simply held that as Penniman was, under the laws of Texas, the legal owner, so also was his successor, the American Savings and Loan Association, for whom Clark was receiver, and who had acquired the land from Penniman (Clark also had a deed direct from Penniman), and that as such owner Clark was entitled to maintain his suit for the land which was his. The Court held (and certainly properly held) that the mere fact that the owner was also a receiver did not deprive him of the right to wage his suit for the protection of his title to the land.

Surely the courts of a State in which property is situated will not confer upon one person the property of another simply because the one is, and the other is not, a resident of that State; but a State may with propriety say to the foreigner owning property within its borders (which property is entitled to and receives the protection of the laws of the State)—“you have made agreements, done business, contracted debts and traded with our citizens on the strength of the availability of your property

to answer for your debts and obligations, and having so dealt with our citizens our courts will not recognize a decree of the courts of your domicile commanding you to remove those assets from this jurisdiction, or destroy their availability, or reduce our citizens to the expense and inconvenience of submitting their claims to a jurisdiction perhaps thousands of miles away and there proving them, for the first duty of a State is to its own citizens." There is nothing unjust or oppressive in this. [209]

MEYER v. HELLMAN, 91 U. S. 500: Simply holds that under the Bankruptcy Act of 1867 an Assignee in Bankruptcy cannot dispossess an assignee under a State insolvent law of property conveyed to him by an insolvent more than 4 months prior to the filing of the petition in bankruptcy. As the statutory assignment was "executed six months before the petition in bankruptcy was filed, it is to the assignee in bankruptcy a closed proceeding."

IN RE FARRELL, 176 Fed. 504, is exactly to the same effect as Meyer vs. Hellman. In fact it is said, "These decisions, especially the first (Meyer v. Hellman, *supra*) must rule the case at bar."

YOST v. GRAHAM, 40 S. E. 361 (W. Va.): This case holds that the law of the actual situs of personal property protects the claims of creditors domiciled there against transfers by operation of law and is, if anything, an authority against the citer.

WITTERS v. GLOBE BANK, 50 N. E. 932: This was a suit brought in Massachusetts by a creditor resident in Vermont, and the Court was particular

to limit its ruling to cases where no resident creditor was concerned, saying on page 933:

“Whatever may be true of such an assignment when credits of the assignor are attached here by inhabitants of Massachusetts, we perceive no good reason why we should protect, against the rights of the assignee, an attachment made by an inhabitant of Vermont after the assignment.”

PITTMAN v. MARQUATT, 50 N. E. 894 (Indiana): The controversy was in Indiana between a Kentucky assignee and an Illinois creditor.

ROBERTS v. NORCROSS, 45 Atl. 560, involved no rights of a local creditor. The assignee was a resident of Massachusetts, the attaching creditor was a resident of Maine. The forum was the New Hampshire court. [210]

CARTER BATTLE GROCER CO. v. JACKSON (Tex.), 45 S. W. 615. This seems to hold with the plaintiff.

MABON v. ONGLEY ELECTRIC CO., 50 N. E. 805 (N. Y.), simply decided that “A receiver of a foreign corporation appointed by a court of the foreign State cannot maintain an action in this State against such corporation as sole defendant, for the sole purpose of obtaining the appointment in this State of an ancillary receiver.” It is true that the court said by way of dictum, “If the title is by virtue of a voluntary conveyance or transfer, it is sustained as against all, including even domestic creditors”; but is also said by way of dictum, “but if

it (the assignment) depends on a foreign statute or *judgment*, it is sustained *against all except domestic creditors.*”

FENTON v. EDWARDS, 58 P. R. 320 (Cal.): This case, too, was one in which the rights of local creditors were not involved, and after reviewing various authorities, the opinion concludes as follows:

“The general rule is that a voluntary assignment of personal property, valid at the place where it is made, is valid everywhere and wherever the property may be situated, unless such transfer interferes with the domestic laws, policy, or rights of the citizens of the State in which the property is situate. Burrill, *Assignm.* (6th Ed.), p. 359, and cases cited in note 5.”

ATHERTON v. IVES, 20 Fed. 894 (Ky.), was a decision by a Circuit Court 32 years ago and cannot prevail over the latter decisions of the Kentucky Court and of the Supreme Court of the United States.

34 CYC. 493: If only the first paragraph is real it would appear to be an authority in favor of plaintiff, but in the light of the evidence in this case and of the section as a whole, the text is against the plaintiff. The section entire is as follows:

“The title of a receiver by virtue of a voluntary conveyance or assignment is sustained as against all, including even domestic creditors, and the receiver of a corporation which assigns to him all its property has a [211] right to

appeal and litigate for the protection of his claim as assignee; but rights of creditors to proceed in a State other than in which the receiver was appointed are not affected by involuntary assignments executed *under the orders of the appointing Court*, and such receiver will not be recognized to defeat the preference of such creditors."

WEIDER v. MADDOX (Tex.), 1 S. W. 168, refers to voluntary assignments only. The decision says, on p. 170:

"If it be an assignment under a compulsory statute, it exists alone by force of the law, which cannot operate extraterritorially. The law is compulsory if it requires the assignment to be made even at the request of creditors."

FIRST NAT. BANK v. WALKER, 23 Atl. 690 (Conn.), refers to voluntary assignments only.

CONCLUSION.

This Court holding that the receivership and assignment were in *invitum*, likewise holds that neither one (or both) has any extraterritorial effect as against attaching resident creditors. On the latter holding the law is well settled. To even cite the numerous authorities on this point would fill pages of typewritten matter, and to review even a few of them would extend this opinion to an unconscionable length. Out of the many, I have selected the case of Catlin v. Wilcox Silver Plate Co., 24 N. E. 250 (Indiana, 1890), as being the fullest, most luminous and most nearly opposite; and because of

those facts and of the further fact that it is cited by the Supreme Court (*Security Trust Co. vs. Dodd, Mead & Co.*, 173 U. S. 624), and frequently by other courts, I quote from it somewhat at length.

There the facts were as follows: C and D of Chicago were indebted to X of Chicago, also to W of Connecticut; B of [212] Indiana was indebted to C and D; Catlin was receiver of C and D by appointment of the Chicago Court, and C and D assigned to Catlin by order of said court. Subsequent to said assignment, W in Indiana Court attached property in Indiana—Catlin asserted superior right as receiver and assignee—The question was: “Are the rights of nonresident attaching creditors in Indiana courts to property in Indiana paramount to those of the receiver (and assignee) appointed by the Chicago court prior to the issuance of the attachment?” The Court answered in the affirmative.—It will be noted that that was a controversy between nonresidents of Indiana, while the case at bar is between a resident and a nonresident. It would seem therefore that the Indiana court would have rendered a more emphatic affirmative had the case before it been exactly like this. Says that Court in that case:

“While it has been held that a court may appoint a receiver and authorize him to take possession of property in a foreign jurisdiction, the doctrine is universal that the appointment confers no legal authority which the receiver can exert over the property without the aid of the courts in whose jurisdiction it

is found. The appointment, of its own force, gives him the right to take possession of the property; but it confers upon him no power to compel the recognition of that right outside of the jurisdiction of the court making the appointment. High, Rec., secs. 47, 241. While there are authorities of great weight which seem to hold that a receiver appointed in one jurisdiction will not be permitted to maintain a suit in a foreign state, the generally prevailing doctrine, upon which all the decisions seem to be harmonious, is that, upon the principles of comity the courts of the jurisdiction in which the property or fund is situate will recognize the rights of the receiver so far as to aid him in reducing it to possession, unless to do so would in some way violate the local policy, or interfere with the rights of resident creditors. *Metzner v. Bauer*, 98 Ind. 425, and cases cited; Beach, Rec., secs. 16-19, 682; *Bank v. McLeod*, 38 Ohio St. 174. But the recognition of well-established principles of comity and courtesy between courts of different jurisdiction is one thing, while the rights of resident or other attaching creditors, who are seeking to avail themselves of legal proceedings, authorized by statutes of the state, for the appropriation of a fund belonging to a nonresident debtor, must be determined upon altogether different principles. As has, in effect, been said, courts are prepared to extend comity where there is no reason to the contrary, especially if there is no

interest of their own citizens, or of the citizens of another state who are asking the protection of their laws, injuriously affected by such recognition. *Paine v. Lester*, 44 Conn. 196; *Milne v. Moreton*, 6 Bin. 361. The rule may be considered as established that a receiver may invoke the aid of a foreign court in obtaining possession of property [213] or funds within its jurisdiction to which he is entitled, but aid will only be extended as against those who were parties, or in some way in privity with the proceedings, in the court in which his appointment was made, or who are in possession of the property or fund to which the receiver has a right, and not against creditors of a nonresident debtor who are seeking to subject the property or fund to the payment of their debts by proceedings duly instituted for that purpose. Accordingly, in *Hurd v. City of Elizabeth*, 41 N. J. Law, 1, the Court said: 'That the officers of a foreign court should not be permitted, as against the claims of creditors resident here, to remove from this State the assets of the debtor, is a proposition that appears to be asserted by all the decisions.' The principle upon which the decisions rest is that it is the policy of the government to retain within its control the property of a foreign debtor until all domestic claims have been satisfied, and hence the right of the receiver of a foreign court to sue, which is allowed only upon considerations of comity, will be denied when it

comes in conflict with the interests of domestic creditors. 'We decline,' said the court in *Runk v. St. John*, 29 Barb. 585, 'to extend our wonted courtesy so far as to work detriment to citizens of our own state who have been induced to give credit to the foreign insolvent.' *Bagley v. Railroad Co.*, 86 Pa. St. 291; *Insurance Co. v. Wright*, 55 Vt. 526; *Thurston v. Rosenfield*, 42 Mo. 474; *Willitts v. Waite*, 25 N. Y. 577. It follows, hence, that the available legal authority of a receiver is co-extensive only with the jurisdiction of the court by which he was appointed, when the right of precedence or priority of creditors is asserted in respect to property or funds of a non-resident debtor, which the receiver has not yet induced to possession. *Hunt v. Insurance Co.*, 55 Me. 290; *Warren v. Bank*, 7 Phila. 156; *Booth v. Clark*, 17 How. 322; *State v. Railroad Co.*, 15 Fla. 202; *Insurance Co. v. Needles*, 52 Mo. 17; *Taylor v. Insurance Co.*, 14 Allen, 353.

It is said, however, that, as *Clapp & Davies* were residents of the state of Illinois at the time the receiver was appointed, the debt due them from *Bagley & Oberreich* was within the jurisdiction of the Superior Court of Cook county, upon the principle that the domicile draws to it the personal property and choses in action of the owner, wherever they may be situated. Hence the contention is that, as the appointment of the appellant as receiver was followed by a general deed of assignment, valid in

the state of Illinois, it must be regarded as valid here, and as divesting Clapp & Davies of all title or interest in the debt in controversy after the date of the assignment. It is, of course, well settled that personal property is transferrable according to the law of the owner's domicile, and that a voluntary assignment or transfer, made without compulsion or legal coercion, is to be governed everywhere by that law, unless the contract by which the transfer was made is limited or restrained by some policy or positive enactment of the state in which the property is situate, or unless it affects the citizens of the latter state injuriously. *Iron Works v. Warren*, 76 Ind. 512; *Martin v. Potter*, 11 Gray, 37; *Weider v. Maddox*, 66 Tex. 372; 1 S. W. Rep. 168; *Warner v. Jaffray*, 96 N. Y. 248; *Green v. Van Buskirk*, 7 Wall, 150; *Askew v. Bank*, 83 Mo. 366; *Law v. Mills*, 18 Pa. St. 185; *Burrill*, Assignm. sec. 301; *Story*, Confl. Laws, secs. 383-390. 'The voluntary transfer of a chattel by the debtor, if it be not forbidden in other respects by the law at the place of situs, is to be as much regarded there or elsewhere as it would be at the place of the domicile.' *Lowry v. Hall*, 2 Watts & S. 131; *Smith's Appeal*, 104 Pa. St. 381; [214] *Chafee v. Bank*, 71 Me. 514. Such an assignment will not be upheld, however, if it contravenes the policy of the law of the place where the property is situate. *Guillander v. Howell*, 35 N. Y. 657; *Faulkner v. Hyman*, 142 Mass. 53, 6 N. E. Rep.

846; *Moore v. Church*, 70 Iowa, 208, 30 N. W. Rep. 855; *In re Waite*, 99 N. Y. 433, 2 N. E. Rep. 440.

The principals above stated are applicable only to transfer or assignments of property which rest essentially on contract, and are voluntary in the sense that they are the product of a will acting without legal compulsion. Property in a foreign state that has passed from an assignor to an assignee by a voluntary deed, and not by proceedings *in invitum*, by process of law, is distinguished from like property in the hands of a receiver by operation of law, or by an assignment made under legal compulsion. Assignments of the latter class are held inoperative upon property not situate within the territory over which the laws that make, or compel, the debtor to make, them have dominion. *Rhawn v. Pearce*, 110 Ill. 350; *Smith's Appeal*, 104 Pa. St. 381; *Weider v. Maddox*, *supra*. Involuntary assignments which are made under foreign insolvent laws have no operation outside of the state under whose laws they were made, while a voluntary assignment is a personal, common-law right, possessed by every owner of property, and may operate in one state as well as another. *Walters v. Whitlock*, 9 Fla. 86.

Some conflict or contrariety of opinion may be found in the decisions in respect to what may or may not constitute a voluntary assignment

under the statutes of different states; but it is unnecessary to enter upon a discussion of the cases relating to voluntary assignments, as all the authorities agree that where an assignment is made under compulsion of law, or where property is taken *in invitum*, the transfer will not be regarded as voluntary, nor will it be effectual beyond the jurisdiction in which it was made, when it conflicts with the interests of citizens in a foreign jurisdiction. As we have seen, a court cannot extend its jurisdiction by the appointment of a receiver. So it is equally powerless to do so by coercing an assignment of the property in controversy. An assignment is regarded merely as a matter of convenience, in aid of the jurisdiction of the court; the established doctrine being that as against non-resident creditors the assignment confers no additional or higher right to the property than the receiver had by virtue of his appointment. *Iddings v. Bruen*, 4 Sandf. Ch. 252; High, Rec. 443.

While it is true, as has been remarked before, the domicile of the owner, in legal contemplation, draws to it his personal estate wherever it may be, yet, as this is so only by fiction of law, the rule is not of universal application. When, by the law and policy of the state where the property is actually located, it is subject to the process of attachment or garnishment at the suit of a domestic or other creditor, the fiction yields, and the actual situs of the property determines

whether or not it should be subjected to the process of the court. Warner v. Jaffray, *supra*; Green v. Van Buskirk, *supra*. In cases of attachment and garnishment, like those for founding administration, the situs of a debt is the residence of the debtor. Wyman v. Halstead, 109 U. S. 654, 3 Sup. Ct. Rep. 417; Owen v. Miller, 10 Ohio St. 136."

POSSESSION.

I cannot see how the fact that the receiver—assignee took possession prior to the attachment can alter the case. [215]

"The true principle is that the assignees in an assignment *in invitum* are on no other or better footing than the bankrupt himself in regard to property or assets in other jurisdictions. They take subject to every equity and subject to the remedies, provided by the laws of the foreign jurisdiction, and when permitted to sue therein it is not as assignees having an interest but as representatives of the assignor."

(2 R. C. L. sec. 42, page 688, and cases cited.)

SILENCE OF ATTORNEY AS ASSENT.

Nor can I believe that the fact, that the attorney for McDonald was informed that the company intended to convey to the Receiver and expressed no dissent, at all affects Mr. McDonald's rights. There is no evidence that the making of the Assignment was at all induced by any thing done or omitted by McDonald or his attorney—neither McDonald nor his attorney assented to the proposed assignment.

There was no call upon either to speak. They were dealing at arms length with the corporation and all its creditors who were not as favorably situated as McDonald was. As well or better might it be contended that McDonald ratified and consented to be bound by the foreign receivership because his attorney had knowledge of it as a *fait accompli*, as to contend that McDonald assented to the foreign assignment to be made *in futuro*, because his attorney learned that it was the design of his adversary to make such assignment—Is one to be penalized, by being made to forego an existing superiority of position, simply because a knowledge of the plans of his adversary has been thrust upon him or his attorney by his adversary's attorney? To ask the question is to answer it. The knowledge of this proposed assignment has conferred no benefit on McDonald which he would not have otherwise had, nor has it in any way contributed to cause the disadvantage of which the corporation or other creditors were under (by reason of their location and circumstances) to be at all increased. [216]

LACHES.

There is no evidence that when the Assignment was finally made, either McDonald or his attorney had any knowledge, either actual or constructive, of the fact that it had been made. The Assignment of the property in question was not placed on record in Alaska; although the Assignment of the real estate was recorded on October 30, 1914, in the proper district. The Assignment was made at Seattle on the 26th of October, 1914, and the attachment was in

Alaska in January, 1915. Surely McDonald did not wait an unreasonable time before asserting his rights—laches will not be attributed to him for only two or three months delay. It is not shown that he has at all participated in or accepted any benefits from the Receivership or the Assignment, or in any way misled his adversaries to the latter's disadvantage.

The findings and judgment will have to be for the defendant.

Filed in the District Court, District of Alaska, First Division. Jan. 6, 1916. J. W. Bell, Clerk. By C. Z. Denny, Deputy. [217]

*In the District Court for the District of Alaska,
Division Number One, at Juneau.*

No. 1264-A.

E. SCHOENWALD and S. T. HILLS, and E.
SCHOENWALD and S. T. HILLS as Re-
ceivers and Assignees of the PACIFIC
COAST & NORWAY PACKING COM-
PANY, a Corporation,

Plaintiffs,

vs.

HARRY A. BISHOP, as United States Marshal
for the First Division of the District of
Alaska, and D. N. McDONALD,

Defendants.

Praeipce for Transcript of Record.

To the Clerk of the Above-entitled Court:

Please prepare transcript in the above-entitled

cause on Writ of Error, consisting of the following papers, viz.:

1. Complaint.
2. Answer.
3. Motion of Plaintiffs to Strike from Answer.
4. Demurrer to Answer.
5. Order Ruling on above Motion and Demurrer,
dated Dec. 20/15.
6. Reply.
7. Order, with consent of parties, Discharging
Jury at the end of the introduction of the
evidence.
8. Findings of Fact and Conclusions of Law
~~offered by plaintiff.~~
9. Order of Court denying proposed Findings of
Fact and Conclusions of Law of Plaintiff.
10. Findings of Fact and Conclusions of Law
~~offered by the Court.~~
11. Judgment.
12. Motion for New Trial and order denying same.
13. Order extending time to file Bill of Exceptions.
[218]
14. Assignments of Error.
15. Petition for Writ of Error.
16. Order approving amount of Bond on Writ of
Error.
17. Bond on Writ of Error.
18. Writ of Error, and allowing of same by Court.
19. Citation on Writ of Error.
20. Bill of Exceptions to be settled and allowed
by the Court.

21. Opinion of Court.

And this praecipe.

WINN & BURTON,

Attorneys for Plaintiff. [219]

Filed in the District Court, District of Alaska,
First Division. Mar. 7, 1916.

J. W. BELL,

Clerk.

By L. E. Spacy,

Deputy. [220]

[Endorsed]: No. 1264-A. In the District Court for the Territory of Alaska, Division No. 1. E. Schoenwald and S. T. Hills and E. Schoenwald and S. T. Hills as Receivers, etc., Plaintiffs, vs. Harry A. Bishop, as U. S. Marshal for the First Division of the District of Alaska, and D. N. McDonald, Defendants. Praecipe.

*In the District Court for the District of Alaska,
Division No. 1, at Juneau.*

United States of America,

District of Alaska,

Division No. 1,—ss.

**Certificate of Clerk U. S. District Court to
Transcript of Record.**

I, J. W. Bell, Clerk of the District Court for the District of Alaska, Division No. 1, hereby certify that the foregoing and hereto attached 220 pages of typewritten matter, numbered from 1 to 220, both inclusive, constitute a full, true, and complete copy,

and the whole thereof, prepared in accordance with the praecipe of plaintiffs and plaintiffs in error, on file in my office and made a part hereof, in Cause No. 1264-A, wherein E. Schoenwald and S. T. Hills and E. Schoenwald and S. T. Hills, as receiver and assignees of the Pacific Coast and Norway Packing Company, a corporation, are plaintiffs and plaintiffs in error, vs. Harry A. Bishop, as United States Marshal for the District of Alaska, Division Number One, and D. N. McDonald, defendants and defendants in error.

I further certify that the said record is by virtue of the Writ of Error and Citation issued in this cause, and the return thereof in accordance therewith.

I further certify that this transcript was prepared by me in my office, and the cost of preparation, examination and certificate, amounting to Ninety-nine and 75/100 Dollars (\$99.75), has been paid to me by counsel for plaintiff in error.

In WITNESS WHEREOF I have hereunto set my hand and the seal of the above-entitled Court this 8th day of June, 1916.

[Seal]

J. W. BELL,
Clerk.

By _____,
Deputy.

[Endorsed]: No. 2817. United States Circuit Court of Appeals for the Ninth Circuit. E. Schoenwald and S. T. Hills as Receivers and Assignees of the Pacific Coast & Norway Packing Company, a Corporation, Plaintiffs in Error, vs. Harry A. Bishop, as United States Marshal for the First Division of the District of Alaska, and D. N. McDonald, Defendants in Error. Transcript of Record. Upon Writ of Error to the United States District Court of the District of Alaska, Division No. 1.

Filed June 19, 1916.

F. D. MONCKTON,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

By Paul P. O'Brien,
Deputy Clerk.